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ABSTRACT

The assistance program to American Indians enrolled in public schools, known as the Johnson-O'Malley (JOM) Program, has drawn increasing attention in recent years for Indian people, the general public, and the Bureau of Indian Affairs (BIA). This has resulted in the need for changes in the BIA Manual and the Code of Federal Regulations (CFR) material dealing with these programs and funds. Beginning with the passage of the JOM Act in 1934, this document explains the original act and its revisions, including its initial intent. Up to the FY 1975 appropriation, the position of the Administration and Congress has been that the JOM program is intended for public school Indian children who live on or near reservations. There has been, though, considerable expression of a desire to expand the program beyond the present eligibility restrictions and to include Indian children wherever they may live, so long as they are from a federally recognized tribe. The BIA has instigated assessments and audits aimed at improving the JOM program and is now working to change the CFR so that it better reflects the many changes that have been and may be made relative to the program. The report includes many of the various memos, drafts, proposed budgets and legislation, and reactions to proposed regulation changes. These cover special education programs, authority and definitions, contract eligibility, community participation, and general contract requirements. (KM)

ED 094899

RESEARCH AND EVALUATION REPORT SERIES NO. 15-A

ASSISTANCE TO INDIANS ENROLLED IN PUBLIC SCHOOLS
JOHNSON O'MALLEY REGULATIONS
A PROGRESS REPORT

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FOREWORD

The program of assistance to Indians enrolled in public schools, commonly referred to as the Johnson O'Malley Program, has drawn increasing attention in recent years from Indian people, the general public, and from the BIA.

This has resulted in the recognition of the need for changes in the BIA Manual and CFR material dealing with the programs and funds administered under the Johnson O'Malley authority.

The historical account contained in this document will, it is hoped, assist interested persons to understand the significance of past developments, and the rationale for the current situation.

Dr. Clennon E. Sockey
Director, Office of
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AN OVERVIEW OF DEVELOPMENTS

An Act authorizing contracting for certain services to be provided to eligible Indians, (the Johnson O'Malley Act), April 16, 1934, as amended by the Act of June 4, 1936, was implemented by Part 33, Title 25, Enrollment of Indians in Public Schools.

Authority under this Act was quite broad, but the regulations in Part 33, Title 25, limited expenditures to eligible public school districts containing large blocks of non-taxable Indian-owned land and large numbers of Indian children.

The original intent was to transfer Indian students from federally operated schools to public schools and to reimburse the school districts for loss of tax revenue and to enable them to provide the same basic education program to Indian students that public schools were providing to all other students.

Stated BIA and Departmental objectives were to encourage and assist Indians to "enter the mainstream of American life" - adopt the non-Indian culture - become "self-sufficient."

Once the transfer to a public school was accomplished, little attention was given to educational progress of the Indian students; Indian parents, generally were not sufficiently aware of specific educational needs of their children, and most parents assumed that if their children stayed in school, "everything would be alright."

In 1957, some public school districts became eligible to receive funding under P.L. 874 because of "Indian impact" - loss of revenue because of non-taxable lands, and their obligation to educate increasing numbers of Indian students. At first, it was thought that no more "Johnson O'Malley" funding would be necessary.

However, two factors were soon recognized:

(1) In school districts composed almost entirely of Indian land with little or no tax base, P.L. 874 payments and other income were insufficient to operate schools.

(2) Cost of operation in isolated areas was far greater than in more populous areas, and the Federal Government has recognized a special responsibility to help meet these costs (see attached statement - Secretary of the Interior).

Therefore, "Johnson O'Malley" payments were continued. The regulations, last revised in 1957, do not adequately define contracting authorities, do not clearly establish responsibilities, do not provide for monitoring, and auditing contracts, do not relate to contracting with Indian groups and do not provide for Indian decision-making.

This has created real difficulties in administration of the program and has pointed up the urgent need for revision of these regulations. This need was

further pointed out by the court cases, including the Natonabah, Molly Hootch and Denetclarence cases, which were filed alleging misuse of JOM funds, An Even Chance Study and Report made in 1970, and the Office of Survey and Review JOM Audits which were requested by the BIA starting in 1971.

The Kennedy Sub-Committee Report also dealt with Indians in public schools. It was from this effort that the Indian Education Act of 1972 was passed. This Act established the Bureau of Indian Education in the Department of Health, Education and Welfare, USOE, and legally created another Federal Agency to deal with the education of Indian children. Thus far, the USOE has dealt extensively with urban based Indian populations.

Another factor which pointed to the need for making the regulations more definitive and explicit came as a direct result of the emphasis on local Indian participation and decision-making. Until about 1971, the program of assistance to Indians in public schools was determined almost entirely by agreement between BIA program officials and public school officials, either at the State of local district level. A change in direction was effected through discussions with Area Offices and directions regarding procedures contained in memoranda of February 22, 1972, and June 26, 1973. Starting in 1971, locally elected Indian Advisory School Boards began making their wishes known and this resulted in the court suits mentioned above, An Even Chance, etc.

These actions clearly pointed out the need for authorizing funding for special need programs - programs relating more closely to the financial needs of the parents, and the educational needs of the Indian students rather than programs simply related to the financial needs of the public school districts. Present JOM regulations are almost entirely related to the school districts' financial needs.

Another reason for revision of the JOM regulations was the recent emphasis on contracting with Indian groups for the administration of JOM funds. Present regulations do not allow sufficient latitude in these contracts, although Indian groups have now contracted for administration of this program in North Dakota, South Dakota, Nebraska, New Mexico, Minnesota, Wisconsin, and California, and other groups are seriously considering submitting proposals. These contracts represent another step toward Indian control and decision-making.

The current effort at revision of the JOM regulations was begun in 1972. Since then, at least 14 drafts have been written. In February 1974, a proposed revision was published in the Federal Register and comments were solicited. Comments were received from many sources, and a Committee was established to review the comments and revise the proposed regulations. In this process several opposing viewpoints emerged. These included:

(1) Service extended to Indians "throughout the U.S." vs. limiting services to Indians "on or near reservations."
(2) Service extended to tribal and Indian corporations operating private schools vs. limiting services to public schools.
(3) Service extended to pre-school programs vs. limiting services to programs which public schools have authority to operate.

(4) Priority given to "special need" programs vs. priority given to "basic support" programs.
(5) Services to be for "exclusive benefit" of Indian students vs. service which might invovle some non-Indians.
(6) Approval by Indian Advisory Boards of all JOM programs and expenditures, vs. approval of special need programs only.

To compliment and lend direction to the efforts at program revision, the Bureau has been developing an evaluation design and process for the Johnson O'Malley Program for the past two years. The first part of the program was devoted to determining the overall scope of activities and accurately describing progress. One Area Office (Muskogee) has developed and tried out an Area level evaluation process. The Central Office has developed a tentative evaluation report form and is in the process of reviewing it critically relative to revisions and further tryouts.

Due to the extreme complexity of the program, it is anticipated that it will take an additional two developmental years before adequate recurring evaluative data becomes available. Nevertheless, a beginning has been made to develop evaluation data that reflect benefits to Indian children participating in JOM activities in public schools. There has been improved fiscal accounting procedures at the Central Office level of operation in order to develop more reliable and up-to-date information. All of these activities have provided a stronger data source for the Congress and the Administration. For example, an extensive survey of educational need relative to the JOM program in California was conducted and this provided a sound base relative to the return of this state to the program. Also, an extensive national survey was made of needed construction in public schools in which significant numbers of Indian children were enrolled. This has been provided to the Congress and the administration for purposes of planning new construction.

Recently, the Bureau conducted a review of the JOM program to determine the possible conflict or duplication regarding the Title IV program in USOE (Indian Education Act of 1972). This report revealed that as administered, there was no conflict or overlap of program. Currently, the Bureau is working jointly with Title IV personnel on an indepth survey of education of Indians in public schools. The results of this should be available sometime this coming fall, 1974.

S U M M A R Y

Up to now, the position of the Administration and the Congress has been that the JOM program is intended for public school Indian children who live on or near reservations. The 1975 Fiscal Year appropriation is based on this position.

The basic legislation, which dates back to 1934, is flexible and could be interpreted differently so as to include Indian children living in cities and towns removed from a reservation land base.

There has developed considerable expression of a desire to expand the program to go beyond the present restrictions on eligibility and to include Indian children wherever they may live, so long as they are from a federally recognized tribe.

There has been legislation enacted by the Congress, (Indian Education Act of 1972), to generally liberalize Federal support to Indian education. There is pending legislation relative to expansion and changes in the JOM program. Possible new needs have emerged.

The Bureau of Indian Affairs has been changing the JOM program and has instigated assessments and audits aimed at improving the situation. They are cooperating with a joint USOE study of the public school education of Indian children. They are now working to change the Code of Federal Regulations so that it better reflects the many changes that have been made and may be made relative to the program.

(Public--No. 167-73d Congress)

(S. 2571)

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AN ACT

Authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized, in his discretion, to enter into a contract or contracts with any State or Territory having legal authority so to do, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the qualified agencies of such State or Territory, and to expend under such contract or contracts moneys appropriated by Congress for the education, medical attention agricultural assistance, and social welfare, including relief of distress, of Indians in such State.

Sec. 2. That the Secretary of the Interior, in making any contract herein authorized with any State or Territory, may permit such State or Territory to utilize for the purpose of this Act, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance.

Sec. 3. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations, including minimum standards of service, as may be necessary and proper for the purpose of carrying the provisions of this Act into effect: Provided, That such minimum standards of service are not less than the highest maintained by the States or Territories with which said contract or contracts, as herein provided, are executed.

Sec. 4. That the Secretary of the Interior shall report annually to the Congress any contract or contracts made under the provisions of this Act, and the moneys expended thereunder.

Sec. 5. That the provisions of this Act shall not apply to the State of Oklahoma.

Approved, April 16, 1934.

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PART 33—ENROLLMENT OF INDIANS IN PUBLIC SCHOOLS

Sec.
33.1 Definitions.
33.2 Public school enrollment.
33.3 State school laws.
33.4 Contracts with public schools.
33.5 General requirements for contracts.
33.6 Public school use of Federal school property.

AUTHORITY: The provisions of this Part 33 issued under sec. 3, 48 Stat. 596, as amended; 25 U.S.C. 454, unless otherwise noted.

SOURCE: The provisions of this Part 33 appear at 22 F.R. 10533, Dec. 24, 1957, unless otherwise noted.

§ 33.1 Definitions.

Whenever used in this part the terms defined in this section shall have the meaning herein stated:

(a) "State" means the State, Territory, or school district contracting for the education of Indian children.

(b) A "school district" is the local unit of school administration as defined by the laws of the State in which it is located.

§ 33.2 Public school enrollment.

Enrollment of Indian children in public schools shall be encouraged where such schools are adequate and accessible.

§ 33.3 State school laws.

All Indians as citizens of the State wherein they reside shall be amenable to the school laws of such State. Employees of any State may be permitted to enter upon Indian tribal lands, reservations, or allotments therein (a) to inspect educational conditions or (b) to enforce the penalties of State compulsory school attendance laws against Indian children, and parents or other persons in loco parentis, except that the provisions of this section shall not apply to Indians of any tribe in which a duly constituted governing body exists until such body has adopted a resolution consenting to such application.
(60 Stat. 962; 25 U.S.C. 231)

§ 33.4 Contracts with public schools.

(a) Contracts may be entered into under the provisions of the act of April 16, 1934 (48 Stat. 596), as amended by the act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452-456), with the authorities of any State for the education of Indian children of one-fourth or more degree Indian blood, unless excepted by law, and to expend under such contracts moneys appropriated by Congress for such purposes and to permit the use of existing Federal Indian school facilities and equipment by the local school authorities under such terms as may be agreed upon.

(b) The program will be administered to accommodate unmet financial needs of school districts related to the presence of large blocks of nontaxable Indian-owned property in the district and relatively large numbers of Indian children which create situations which local funds are inadequate to meet. This Federal assistance program shall be based on the need of the district for supplemental funds to maintain an adequate school after evidence of reasonable tax effort and receipt of all other aids to the district without reflection on the status of Indian children.

(c) When school districts educating Indian children are eligible for Federal aid under Public Law 874, 81st Congress (64 Stat. 1100), as amended, supplemental aid under the act of April 16, 1934, supra, will be limited to meeting educational problems under extraordinary or exceptional circumstances.
[22 F.R. 10533, Dec. 24, 1957, as amended at 23 F.R. 7104, Sept. 13, 1958]

§ 33.5 General requirements for contracts.

(a) *State plan.* To become eligible to participate in contract funds a State shall formulate a plan for the distribution of contract funds to local school units, which shall be acceptable to the Commissioner of Indian Affairs or his authorized representative.

(b) *Budget estimates and reports.* Each State having a contract covering education in accordance with this part shall submit such budgets, estimates, and reports as may be required by the Commissioner of Indian Affairs or his authorized representative.

(c) *Equal educational opportunities.* Contracts shall specify that education for Indian children in public schools within the State shall be provided upon the same terms and under the same conditions that apply to all other citizens of the State.

(d) *Uniform application of State law.* States entering into a contract under the provisions of this part shall agree that schools receiving Indian children, including those coming from Indian reservations, shall receive all aid from the State, and other proper sources other than this contract, which other similar schools of the State are entitled to receive. In no instance shall there discrimination by the State or subdi sion thereof against Indians or in support of schools receiving such dians, and such schools shall rece State and other non-Indian Bur funds or aid to which schools entitled.

(e) *Educational standards.* The St shall provide in all schools that h Indian pupils adequate standards educational service, such standards be equal to those required by the St in respect to professional preparation teachers, school equipment and suppl text and library books, and construct and sanitation of buildings.

(f) *Federal cooperation and insp tion.* Schools in which Indian child are enrolled shall be open to visits observation and consultation by duly credited representatives of the Fed Government.

(g) *Inspection of programs.* E State having a contract covering edu tion in accordance with this part sh make available to duly accredited e ployees of the Bureau of Indian Aff such records and reports as may be n essary to enable them to conduct insp tions of the school program related the contracts.

§ 33.6 Public school use of Fed school property.

The use of federally owned facili for public school purposes may be thorized when not needed for Fed activities. Transfers of title to s facilities may be arranged under provisions of the act of June 4, 1953 Stat. 41).

(a) *Insurance covering nonexpend property.* When nonexpendable G ernment property is turned over to pu school authorities under a permit, permittee shall insure such p op against damage by fire, windstorm, tornado in amounts and with compa satisfactory to the superintendent officer in charge of the Indian ag charged with responsibility for the p erty. In case of damage or destruc of such property by fire, windstorm tornado, the insurance money coll shall be expended only for repair or placement of such property; other insurance proceeds shall be remitte the Bureau.

(b) *Maintenance of buildings.* State shall maintain the property reasonable state of repair.

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CHAPTER 1

ADMINISTRATIVE ORGANIZATION

Section 101. General Information Relative to Program.

.01 Objectives. The basic educational objective of the Bureau of Indian Affairs is to assure adequate educational opportunities for all Indian children of one-fourth or more degree of Indian blood within the continental United States and Alaska. This basic objective includes the following:

A. To obtain school facilities for eligible Indian children not now in school.

(1) To increase enrollment of children in available public and Federal schools.

(2) To secure construction of needed school plants through applicable laws and appropriations. For example, Public Law 815, 81st, Cong. (64 Stat. 967) as amended August 8, 1953 (67 Stat. 522), and Navajo-Hopi Rehabilitation Act, 81st Cong. (64 Stat. 44).

(3) To provide temporary facilities to meet emergency situations.

(4) To initiate other less traditional arrangements for providing educational opportunities for children in isolated family units.

B. To carry out an effective program for children in Federal schools designed to prepare Indians for successful living.

(1) To develop in children basic academic skills.

(2) To give children an understanding of the social and economic world and to help them secure improved standards of living.

(3) To develop understandings and practices which will assure optimum health.

(4) To provide vocational training which will qualify youth for gainful employment.

(5) To provide adequate training for students desiring to enter special schools and institutions of higher learning.

(6) To make available financial aid and other assistance to qualified students seeking advanced training.

(7) To provide guides for planning and conducting local school programs based on the needs of children.

(8) To develop materials and teaching aids.

(9) To provide opportunities for professional growth of employees through in-service training, conferences, seminars, workshops, meetings, advanced courses.

(10) To provide for research and surveys.

(11) To provide technical consultation in guidance, health education, home living, and other fields.

C. To secure for all Indian children the educational opportunities provided for other citizens through our system of public education.

(1) To transfer the operation of Federal schools and school plants to public school districts through orderly procedure.

(a) To secure the active participation of local Indians, employees, and public school officials and patrons in all phases of the transfer.

(b) To propose transfers to local school districts title to school lands and property.

(2) To assure adequate educational programs in public schools enrolling Indian children.

(3) To provide financial aid to qualifying public schools.

D. To develop on the part of Indian groups, State and local school officials recognition and acceptance of their full responsibilities for the education of Indians.

(1) To furnish adequate information concerning responsibilities and pertinent facts needed for determining decisions.

(2) To cooperate with other groups in formulating principles underlying responsibilities.

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E. To retain the valuable elements of Indian life and to strengthen the pride of Indian groups and the recognition by non-Indians as to the contribution of the Indian heritage to the national life.

(1) To include information regarding the various Indian cultures in the school curriculum.

(2) To interpret Indian cultural values to non-Indian groups.

F. To secure regular school attendance of all Indian children until they graduate.

(1) To cooperate with parent-teacher associations and local organizations in securing acceptance by Indians of responsibility for regular attendance.

(2) To cooperate with officials in securing enforcement of applicable attendance laws when other means fail.

G. To appraise periodically the need for boarding schools.

(1) To accept applicants for boarding schools on the basis of established criteria and admit only those for whom adequate provision cannot otherwise be made.

(2) To close boarding schools which established criteria indicate are no longer needed.

.02 Authority. Administration of the Indian School Service is vested in the Commissioner of Indian Affairs, subject to the direction of the Secretary of the Interior. (Act 35 Stat. 72; 25 U.S.C. 295)

.03 Policy. It shall be the policy of the Bureau of Indian Affairs to accomplish these objectives either directly or by arrangements with States, public or mission schools. Wherever adequate school facilities are available, Indian children shall be enrolled in the local public schools. Where such facilities are not available, Indian children may be enrolled in Federal Indian schools.

EXCERPTS RE: JOM

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91ST CONGRESS } SENATE { REPORT
1st Session } { No. 91-501

INDIAN EDUCATION: A NATIONAL TRAGEDY—A NATIONAL CHALLENGE

1969 REPORT

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

MADE BY ITS

SPECIAL SUBCOMMITTEE ON INDIAN EDUCATION

PURSUANT TO

S. Res. 80

(91st Cong., 1st Sess.)

(TOGETHER WITH SUPPLEMENTAL VIEWS)

A RESOLUTION AUTHORIZING AN INVESTIGATION INTO THE PROBLEMS OF EDUCATION FOR AMERICAN INDIANS

NOVEMBER 3, 1969.—Ordered to be printed
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4. JOHNSON-O'MALLEY ACT, APRIL 16, 1934

The Johnson-O'Malley act authorized the Secretary of Interior to contract with States or territories for the education, medical attention, agricultural assistance, and social welfare of Indians in the State.[65] In 1936 the act was amended to its present form. The amendment expanded the contracting authority of the Secretary of the Interior, giving him the authority to contract with State universities, colleges, schools, or with any appropriate State or private corporation, agency, or institution.

The intent of the act as expressed in the identical reports submitted to each House of Congress, was to "arrange for the handling of certain Indian problems with those States in which the Indian tribal life is largely broken up and in which the Indians are to a considerable extent mixed with the general population."[66] The report noted that in many areas Indians are mixed with the white population, and therefore "it becomes advisable to fit them into the general public school scheme rather than to provide separate schools for them."[67] The act thus gave legislative authority to the Bureau's policy of gradually turning over its education function to the public schools. The act also facilitated Federal-State cooperation by making contracts negotiable at the State level rather than the local. It has become one of the primary means of Federal subsidization of Indian education.

In 1935, California became the first State to contract for and under Johnson-O'Malley, and by 1940, contracts had also been negotiated with Arizona, Minnesota, and Washington.[68] By 1951, 14 States and

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[65] 48 Stat. 596.
[66] H. Rept. 864, Mar. 2, 1934, and S. Rept. 311, Mar. 20, 1934.
[67] Ibid.
[68] Felix Cohen, "Handbook of Federal Indian Law," 1940 ed., p. 361.

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five districts within States were receiving $2,505,933 in Johnson-O'Malley funds. The estimated expenditure for fiscal 1969 is $11,552,000, or approximately $174 per student.[69]

Since the act's inception, the number of Indian students in public schools has increased to about two-thirds of all Indian students. Although the act brought about increased enrollment of Indians in public schools, its success in meeting the educational needs of those students is open to serious question.

Why hasn't the Johnson-O'Malley act dealt adequately with the needs of Indian students? The problem lies not so much with the act itself, as with the manner in which it has been interpreted. For though the language of the act is broad, its interpretation has been narrow, and therefore the intent of the legislation has not been realized.

The Bureau of Indian Affairs, for example, has adopted a more restricted eligibility requirement than that suggested by Congress. Congressional intent was to service Indians in States "in which the Indian tribal life is largely broken up and in which the Indians are to a considerable extent mixed with the general population." [70] The Bureau's policy is to serve Indian children (one-fourth or more Indian blood) "whose parents live on or near Indian reservations under the jurisdiction of the Bureau of Indian Affairs." The policy statement declares that "the tax-free status of land where the parents live will be the major consideration in determining the eligibility of the children." [71]

Despite the act's expressed intent to deal only with Indian needs, the Johnson-O'Malley money has been traditionally used by school districts to supplement their general operating budget, thus benefiting all their students. The Code of Federal Regulations (1958) sanctions this use by stating that Johnson-O'Malley money can be used to meet the financial needs of those school districts which have "large blocks of nontaxable Indian-owned property * * * and relatively large numbers of Indians which create situations which local funds are inadequate to meet."

Use of the money for "meeting educational problems under extraordinary and exceptional circumstances" is limited by regulation to those districts which receive Public Law 81–874 money to meet partial costs of normal school operation. (Public Law 81–874 funds provide "in lieu of taxes" money to districts which, because of the presence of tax-exempt land, need additional money for normal school operations.) With the inclusion of Indians in Public Law 81–874 in 1958, that law took care of some of the basic support money heretofore provided by Johnson-O'Malley. Yet the policy of the Bureau continues to place the tax-exempt status of land as the prime determiner of Johnson-O'Malley eligibility rather than educational need.[72]

The Johnson-O'Malley money not used for basic support (operation and maintenance) is used to provide lunches, transportation, administrative costs and—occasionally—special instructional services. Twenty to twenty-five percent of Johnson-O'Malley expenditures are for school lunches for Indian students, as compared to 3.8 percent of Title I, ESEA, expenditures for feeding programs. About 5 percent of the

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[69] BIA Branch of Public School Relations.
[70] H. Rept. 804, Mar. 2, 1934.
[71] Indian Affairs Manual, 62 IAM 3.5.
[72] Indian Affairs Manual, 62 IAM 3.23.

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annual expenditure is for administration, an amount generally in line with expenditures for administration under the ESEA. Indian Education directors in State departments of education which hold Johnson-O'Malley contracts are paid out of the Johnson-O'Malley appropriation. The Bureau reports that in 1969, it budgeted 30 percent of the funds for "special services."

In some States, special services means providing bus service for Indian children. In others it means buying volleyball standards and tumbling pads. Some use it to pay off the mortgage on a bus, increase teacher salaries, or hire attendance officers. In a few cases it is used to hire teacher aides and provide libraries and study halls for Indians. There is no detailed accountability of the use of the money.

Today, 35 years after it was originally adopted, it is still highly questionable if the Johnson-O'Malley Act is fulfilling the intent of Congress. It is true that more Indians are in public schools, but it is doubtful if the needs of these Indian children are being met any more than they were 35 years ago.

Conflict with Public Law 874

One of the main problems with the act has been the conflict between it and Public Law 874. Public Law 874 provides funds for school districts which educate large numbers of children whose parents live or work on tax-exempt property. The law became applicable to Indians in 1958, and since that time, school districts educating Indian children have received compensation for the nearby presence of tax-exempt reservations.

Congress never intended that duplicate payments should be made to the same school for the same purpose by two different Federal agencies. But often, both Public Law 874 and Johnson-O'Malley money do just that. The Federal regulation permits such use of Johnson-O'Malley money when Public Law 874 funds are insufficient for general school operations.[73] Few local administrators are likely to admit they have enough money for normal school operations when they know they can get more, and thus Johnson-O'Malley is continually drained for normal operating budget purposes.

Dr. Alphonse Selinger of the Northwest Regional Educational Laboratory testified before the subcommittee that he had encountered at least one principal who admitted giving passing grades to Indian students only to keep them in school so the district could receive Johnson-O'Malley money. Officials from two different schools told Dr. Selinger there was very little they could do for Indian children, so they kept them in the school for the additional funds they brought into the system.[74]

Generally, though, the regulation limits Johnson-O'Malley funds to districts not qualifying under Public Law 874 and to those Public Law 874 districts in which there are "educational problems under extraordinary and exceptional circumstances." (To qualify under Pub-

[73] 62 IAM 8.27.
[74] Hearings before the Senate Subcommittee on Indian Education, pt. VI.

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lic Law 874 a district must meet a 3-percent impact requirement and have a minimum daily attendance of 10 federally connected pupils.)[75] In practice, the money is used as a budget-balancing device for those districts receiving Public Law 874 money. Johnson-O'Malley makes up the difference between a district's education expenditures and its revenues after Public Law 874 has been included.[76]

When Public Law 874 became applicable to Indians in 1959, the Johnson-O'Malley budget suffered considerably. The 1959 Johnson-O'Malley appropriation of $7,953,000 was cut to $5 million in 1960. Although Johnson-O'Malley and Public Law 874 serve different functions, Public Law 874 was, and continues to be, interpreted by BIA officials as replacement money for Johnson-O'Malley.

The problem with a school district replacing Johnson-O'Malley funds with Public Law 874 aid is that there is no guarantee the Public Law 874 money will be used to benefit Indian students. Such money goes to the school district itself, and any benefit received by Indian children would only be indirect. Johnson-O'Malley funds, though, are supposed to aid only Indian children.[77]

Congress also has no control over the use of Public Law 874 money. School districts apply it in their operating budget as they see fit. The Federal Government is prohibited from setting standards for its use or requiring, for example, that it be used for special Indian needs.

Excludes Many Indians

A most important problem with Johnson-O'Malley is that, as presently administered, it excludes from participation Indians who have left the reservation. Thousands of such Indians now live in urban areas, where Indian children attend public schools. Their needs are being ignored just as much there as in rural areas. In Minneapolis, Minn., for example, an estimated 10,000 Indians live in the city. The Indian dropout rate in the city's public school system is more than 60 percent.[78] Some 45,000 Indians live in California cities.[79] The Indian dropout rate in some public schools there approaches 70 percent.[80] Most urban school districts are not eligible for either Johnson-O'Malley or Public Law 874 because the Indian parents do not live or work on tax-exempt reservations. Thus these Indians are not eligible for the special-needs funds Congress intended for them.

A special case exemplifying Johnson-O'Malley problems can be found in California, where some 80,000 Indians are now without Johnson-O'Malley assistance. The first State to enter into a contract

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[75] Impacted areas legislation report and recommendation, prepared for Senate Subcommittee on Education by the U.S. Department of Health, Education, and Welfare, August 1963, pp. 537–538.

[76] Interview with Charles Zellers, BIA Assistant Commissioner for Education, May 22, 1963.

[77] 48 Stat. 596 (Johnson-O'Malley Act).

[78] Minnesota State plan for the education of Indian children, Minnesota Department of Education, 1963.

[79] "The Education of American Indian: An Evaluation of the Literature," Preston Barry, p. 25.

[80] Ibid., p. 29.

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with the BIA under this act, California has since had its Johnson-O'Malley program phased out. It was completely terminated in 1958.

The reasons for the withdrawal of services are many. Many people, including BIA personnel, were under the impression that the termination policy espoused in the midfifties would lead to termination of all Indian aid policies, and California seemed as good a place as any to start cutting programs. There were some who claimed Indians were already receiving an adequate education in California without Federal funds. Others were led to believe—falsely—that Public Law 874 and Public Law 815 would adequately replace Johnson-O'Malley funds. Then in 1953, California's annual Johnson-O'Malley funding of $318,000 was reduced by $50,000. The California appropriation was reduced another $50,000 every year until by 1958, nothing was appropriated.

Noting such evidence as the fact that California high schools with relatively large Indian enrollments have dropout rates three times higher for Indians than for non-Indians, California has sought the return of Johnson-O'Malley money. California educators have argued that many Indians have educational problems requiring special attention and that Public Law 874 has not replaced the need for Johnson-O'Malley funds. But the BIA appears to be following a policy of "once withdrawn, always withdrawn," and thus California Indians continue without the moneys for programs to meet their special needs.[81]

Three other eligible States west of the Mississippi are not under Johnson-O'Malley State contracts. Oregon terminated its contract after being led to believe that Public Law 815 and Public Law 874 would take care of the education of the Indian, and that the BIA intended to terminate all services to Indians shortly anyway. Utah terminated its contract because officials felt the State could get more money under Public Law 874 than Johnson-O'Malley.[82]

In 1969, Wyoming sought a State contract for its Indians, but has been unable to get approval from the Bureau's Washington office. Wyoming school officials claimed their plan called for liaison people between Indian communities and school districts to assist in developing better relationships between the two groups. The Wyoming State education superintendent said the BIA completely rewrote the State's proposed plan, and that the "watered-down" version offered in its place was hardly worthwhile.[83] Bureau officials have indicated their reluctance to give Wyoming Johnson-O'Malley money because they contend that Public Law 874 money is adequately serving the needs of Indians in Wyoming public schools.[84]

Complaints are innumerable regarding the administration of Johnson-O'Malley. For one thing, the levels of aid are extremely uneven. In

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[81] A Johnson-O'Malley educational program for California Indians, State Advisory Commission on Indian Affairs, June 1967.
[82] Ibid.
[83] Interview with Wyoming State Superintendent of Education, June 1969.
[84] Op. cit., interview with Bullers.

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1967–68, Alaska received $690 per Johnson-O'Malley pupil while Oklahoma received $37. Arizona received $236 per pupil while neighboring New Mexico received $135. Even within States, the levels vary greatly. In 1966–67, Santa Fe County, N. Mex., received $310 per Johnson-O'Malley pupil, while McKinley County (Gallup), N. Mex., received $41. According to Dr. Anne M. Smith, anthropologist and author of "Indian Education in New Mexico," "It has not proved possible to discover on what policy basis the allocation of funds is made."[48]

One State, Arizona, has been reducing State aid to districts which receive Johnson-O'Malley funds. Several States were doing the same thing with regard to Public Law 874 money, but the courts ruled against the practice. (See, for example, *Shephard* v. *Godwin*, 280 F. Supp. 869, 1968) BIA officials are hopeful the Arizona legislature will resolve the problem before court action is necessary.

Poor accountability

A major problem with the Johnson-O'Malley program is poor accountability of the funds administered. The legislation requires the State or contracting district to submit an annual report showing expenditures, but far too often these reports are summary and undetailed. Except for a school enrollment data form, there is little uniformity in reporting techniques. One State, for example, will report transportation expenditures under basic support, whereas another State will report such expenditures under special services. In neither case is an explanation of the purpose of the transportation given. The special services sections are almost entirely devoid of meaningful explanations of the services provided.

The reports also provide no evaluation of the previous year's programs. There is apparently never any attitudinal or achievement testing to test the effect, if any, the Johnson-O'Malley programs in particular school districts are having upon Indian students.

Utilizing the amendment

The Bureau of Indian Affairs has not been particularly creative in using the expanded contracting authority granted by the 1936 amendment to the act for educational projects. This amendment authorized the Bureau to contract Johnson-O'Malley projects with State universities, colleges, schools, and appropriate State or private corporations, agencies, and institutions. In the past the amendment has been used for such contracts as those with: (1) The Idaho Elks Rehabilitation Center at Boise for the care of Alaska native children in specialized schools; (2) The Utah School for the Deaf and Blind, for its Indian patients;

[48] Anne Smith, Indian Education in New Mexico, University of New Mexico, 1968.

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and (3) The Salvation Army Booth Memorial Home at Anchorage for the care of native children and eligible adults.

In recent years, the contracting authority has been used for more innovative programs. Johnson-O'Malley money went to the Rough Rock Demonstration School, for example, since it was a nonprofit corporation. A contract was negotiated with the University of Alaska to develop a model of a cultural and educational center for Alaskan natives. And most recently, a contract has been negotiated with the United Tribes of North Dakota, set up as a nonprofit corporation, for the operation of a training center.[50]

Lack of Indian participation

Johnson-O'Malley is supposed to serve the needs of Indian students, but Indians rarely get an opportunity to decide how the money should be spent. The proposals are usually drawn up by school administrators of white middle-class backgrounds who direct the money toward general school operations or problem-solving techniques which might work for the middle-class student, but not the Indian. The people who are affected most by the law have little to say about how the money should be used to help their children.

New approaches by the BIA

In recent years, the Bureau has looked at Johnson-O'Malley a little more imaginatively than in the past, and has funded a few programs which deal more specifically with the needs of Indian students. A home-visitation program in Oklahoma, for example, is working to improve relations between the Indian home and the school. A night study hall for Indians was established in Nevada. Teacher workshops designed to help teachers in dealing with the special needs of Indian students have become more common. A resource center which sends out a circuit rider is now operating in Alaska. In an attempt to get away from the institutional boarding school concept, Johnson-O'Malley money is also being used to set up a home boarding program so that students can live-in with families. Bureau officials also have their sights on Johnson-O'Malley kindergarten programs as well as model school programs for each State with a Johnson-O'Malley contract.

To streamline Johnson-O'Malley procedures, the Bureau tries to confer regularly with State education officials so that the States can share information and hear new Johnson-O'Malley approaches. Two field men, one in Albuquerque and one in Aberdeen, devote a good share of their time to working with State directors and tribal groups in helping them formulate the best possible Johnson-O'Malley budget. The field men are also expected to meet with tribal groups and consider their recommendations for Johnson-O'Malley usage. Bureau officials report that funding for this kind of activity is low, and that such activity often has to be conducted on a limited basis.

[50] Interview with J. Leonard Norwood, BIA Acting Commissioner, June 1969.

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Johnson-O'Malley Education Contracts, 1969

Area and State	
Aberdeen	$1,295,000
Nebraska	240,000
North Dakota	310,000
South Dakota	745,000
Albuquerque: Colorado	170,000
Anadarko: Kansas	20,000
Billings	300,000
Montana	180,000
Wyoming	20,000
Juneau: Alaska	1,485,000
Minneapolis	695,000
Minnesota	375,000
Wisconsin	285,000
Iowa (Tama)	35,000
Muskogee	387,000
Oklahoma	880,000
Mississippi	7,000
Navajo	3,275,000
New Mexico	1,455,000
Peripheral	1,820,000
Phoenix	3,495,000
Arizona	3,370,000
Nevada	95,000
Portland	370,000
Idaho	195,000
Washington	175,000
Seminole (agency): Florida	20,000
Total	11,532,000

NOTE.—Total number of students, 66,212.
Source: Bureau of Indian Affairs.

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JOHNSON-O'MALLEY EXPENDITURES, BY STATE AND PURPOSE, FISCAL YEAR 1988

State	Administration	Location	Other parental aid [1]	Operation and maintenance (facility support) [1]	Special services [1]	Total expenditures
Alaska	$68,000	$135,715	----------	$735,784	----------	$939,499
Arizona	75,437	367,000	----------	2,571,082	911,661	3,925,210
Colorado	4,000	35,525	$8,000	48,000	48,000	143,525
Florida	----------	10,150	----------	----------	----------	10,150
Idaho	13,437	23,150	----------	168,000	16,000	220,587
Iowa	----------	4,863	----------	48,135	----------	52,998
Kansas	3,383	----------	----------	----------	17,737	21,120
Minnesota	30,462	188,842	----------	188,000	16,000	423,304
Montana	29,018	85,000	----------	4,000	77,000	195,018
Nebraska	9,681	27,323	----------	88,145	77,000	202,149
Nevada	9,761	41,243	----------	4,000	36,000	91,004
New Mexico	35,000	500,000	----------	354,000	535,000	1,424,000
North Dakota	13,470	55,129	----------	384,000	----------	452,599
Oklahoma	48,384	315,267	4,746	75,211	168,000	611,608
South Dakota	22,849	112,000	----------	648,911	95,000	878,760
Washington	20,681	23,883	----------	42,000	63,000	149,564
Wisconsin	22,237	48,010	----------	73,000	36,000	179,247
Wyoming	----------	----------	----------	12,000	----------	12,000
Peripheral (dormitories)	----------	27,000	34,000	1,480,000	48,000	1,589,000
Oshkosh (Hospital)	----------	----------	----------	----------	7,000	7,000
Total	439,021	1,940,975	46,000	6,350,410	1,983,054	9,857,000

[1] The remainder of the expenditures was placed in these 3 general categories and represents a variety of items.

Note: The above information was taken from the States' annual reports. The cost of location and administration was in sufficient detail to provide an accurate breakdown.

Source: Bureau of Indian Affairs.

JOHNSON-O'MALLEY ENROLLMENTS, AND EXPENDITURES, 1987-88

State	JOM enrollment	JOM expenditure	Estimated expenditure per pupil
Alaska	1,700	$939,499	$553
Arizona	11,700	3,925,210	336
Colorado	700	143,525	205
Florida	210	10,150	48
Idaho	1,682	220,587	131
Iowa	116	52,998	457
Kansas	91	21,120	232
Minnesota	2,577	423,304	164
Mississippi	28	4,000	143
Montana	2,300	195,018	85
Nebraska	870	202,149	232
Nevada	1,000	91,004	91
New Mexico	11,000	1,424,000	129
North Dakota	1,000	452,599	453
Oklahoma	14,000	611,608	44
South Dakota	4,170	878,760	211
Washington	1,120	149,564	134
Wisconsin	1,103	179,247	163
Wyoming	38	12,000	316
Peripheral dorms (Navajo)	2,330	1,589,000	682
Oshkosh Hospital	7	7,000	1,000
Total	62,676	9,857,000	157

Source: Bureau of Indian Affairs.

[redacted]-O'MALLEY FUNDS APPROPRIATED FOR FISCAL YEARS 1944-59

Fiscal year	Amount appropriated	Fiscal year	Amount appropriated
1944	$1,020,055	1957	$8,381,000
1945	970,215	1958	7,353,000
1946	448,455	1959	7,853,000
1947	1,237,719	1960	8,805,000
1948	1,442,628	1961	9,153,000
1949	1,638,847	1962	8,888,000
1950	2,250,000	1963	7,288,000
1951	2,503,190	1964	7,388,000
1952	2,548,190	1965	7,888,000
1953	2,781,189	1966	8,648,000
1954	3,888,535	1967	8,862,000
1955	3,535,430	1968	8,862,000
1956	4,425,475	1969	11,387,000

Source: Bureau of Indian Affairs.

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C. Johnson-O'Malley Act

48. The subcommittee recommends—

That each state applying for a Johnson-O'Malley contract should be required to submit a definite plan for meeting the needs of its Indian students.

Too often the plans submitted by States are vague and meaningless. Specific programs are rarely outlined, and there appears to be no concerted attack on the problems of the Indian. State plans should detail the use for which Johnson-O'Malley money will be put, and explain how the JOM contribution fits into the statewide plan for helping meet the special needs of Indian students.

49. The subcommittee recommends—

That better accountability and evaluation procedures should be instituted at the State and local levels.

The Bureau of Indian Affairs should require improved evaluation components at the State and local levels. The only accountability measures now are a State's annual report, which vary tremendously in quality and content. Some uniform data collection technique should be established, and States should be required to report the results of their JOM programs rather than just the fact that such programs were in operation.

It is a fair measure of the BIA's lack of concern for the education of Indian children in public schools that the subcommittee could find no evidence of any serious effort by the BIA to assure that JOM funds were used for educational programs for Indian students. The funds are given to local public school districts, which often use the money for general educational purposes rather than the special needs of Indian students. The subcommittee cannot emphasize too strongly that these funds are to be used for the education of Indian children only, and that the BIA should condition their release upon that purpose with proper accountability.

50. The subcommittee recommends—

That Indians should be involved in the planning, executing and evaluating of Johnson-O'Malley programs. A State or district's JOM plan should be subject to the approval of the Indian participants.

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The Bureau of Indian Affairs, as a prerequisite to JOM contract approval, should require Indian participation in the planning, execution, and evaluating of JOM plans. Indians should be involved at both the local and State levels in formulating the JOM budget request, and in seeing that the plan is carried out. All proposals and plans must be approved by those Indians participating.

51. The subcommittee recommends—

That technical assistants should be hired by the BIA to work with local agencies, State departments of education and Indian participant groups in helping to identify special Indian needs and in developing programs which would meet those needs.

The assistants should be Indians who can serve as special consultants to the parties involved in order that the best possible JOM contract can be negotiated. They should not be desk-bound nor assigned to such an expansive territory that they are unable to get out into all parts of the field.

52. The subcommittee recommends—

That Johnson-O'Malley funding should not be conditioned by presence of tax-exempt land.

The criteria for approval of a Johnson-O'Malley contract should be: (*a*) an exhibited need for programs aimed at meeting the special needs of Indian students, and (*b*) a proposal which details how those needs will be met. The presence of nontaxable Indian land should not have any bearing in determining the eligibility of children for JOM money. When the law originally was passed, congressional intent was for the act to serve primarily those Indians who were "to a considerable extent mixed with the general population." That intent has not been fulfilled.

53. The subcommittee recommends—

That the expanded contracting authority authorized by the Act's 1936 amendment should be utilized for the development of curriculum relevant to Indian culture and the training of teachers of Indian students.

Only in recent years has the Bureau shown some creativity in utilization of the expanded contracting authority. This amendment offers far greater potential for innovative educational projects than has been demonstrated. It could be a very good vehicle, for example, to improve curriculum for Indian students, and to train teachers who will be teaching Indian students. Universities and nonprofit corporations might be contracted to develop special curriculums which recognize Indian culture, and to develop and institute teacher-training programs which include a recognition that teachers of Indian students have special responsibilities.

54. The subcommittee recommends—

That tribes and Indian communities should be added to the list of agencies with which the Bureau of Indian Affairs can negotiate Johnson-O'Malley contracts and that full use be made of this new contracting authority to permit tribes to develop their own education projects and programs.

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The subcommittee has found that very few Indian tribes and communities have developed educational plans which identify problems and establish goals. However, the subcommittee was impressed by the fact, that Indian communities have a better understanding of their education needs and problems than the schools that serve them. The schools rarely understand the Indian community and cultural differences, and the Indian community rarely has any influence on the school. Johnson-O'Malley contracts with Indian tribes and communities could do much to break down these barriers, and place the initiative and responsibility for change and improvement in the hands of those who best understand the problems.

Johnson-O'Malley contracts with Indian tribes and communities could serve a variety of important purposes. For example, tribal surveys and factfinding efforts to determine educational needs; the development of education plans and goals; developing effective liaison between Indian parents and public schools; developing Indian education leadership; planning, funding, implementation and evaluation of special education programs for Indian children in cooperation with public school districts; education programs and projects run directly by the tribe itself (for example, summer school programs).

The basic responsibility for development of this program should be vested in the National Indian Board of Education. It will require close coordination with the development of strong Indian school boards on those reservations with Federal schools.

An important and promising precedent for this tribal-contracting approach has recently been initiated by the Indian Health Service. The Indian community health representative program is worthy of careful study by the National Indian Board of Education to determine its applicability to the field of Indian education.

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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

IN REPLY REFER TO:
Education

February 22, 1972

Memorandum

To: All Area Directors
Attention: Education

From: Director of Education Programs

Subject: Program Revisions - Johnson-O'Malley

The staff assigned to the Branch of Public School Assistance (Johnson-O'Malley Program) has been considering some changes in operational details.

The Bureau of Indian Affairs Manual, Public School Contracts, clearly states the requirement for Indian Participation in School Affairs. If this philosophy is to be fully implemented, the initial approval of "JOM" Programs must be at the local level--in coordination with Advisory School Boards or Indian Education Committees. Each Area must be responsible for certifying as to Indian Participation, adequacy of school district tax levies, eligibility of the district to receive JOM funds, etc.

In the past, copies of the individual school district contracts, copies of each school district budget, detailed programs, etc., have been furnished to the Central Office staff in Albuquerque. This office will no longer require copies of all of this type of information. We will require on or before March 15 each year a budget request and justification for the second succeeding fiscal year, using a format similar to the one attached. For example, by March 15, 1972, we must receive the initial budget request for Fiscal Year 1974. We will require the form Estimated Johnson-O'Malley Needs; (1) for each school district; (2) a recap for each State; and (3) a combined recap for each Area (if the Area serves more than one State).

This information will be submitted as the total initial budget request. Each Area must be responsible for submitting only realistic requests, for school districts which meet eligibility requirements. If a request appears to be so far out of line that it cannot stand careful review, the Central Office staff will contact the Area Director concerned, and discuss the matter.

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When the Central Office is furnished with budget markings, if the initial request is to be reduced, each Area will be contacted, and will be given latitude to make adjustments within the Area.

As soon as contracts are signed, Central Office will require a current form, "Estimated Johnson-O'Malley Needs," and this will be used to report planned expenditures for the school year.

No other papers need be submitted to the Central Office until the Annual Report is prepared at the end of the school year.

As a part of this Annual Report, we should receive either: (1) a certification that the expenditures were in accordance with the plan; or (2) a revised report showing actual expenditures.

At the end of the present school year (possibly as a part of the Annual Report), we will request basic information on the effectiveness of the JOM Programs.

In the future, we feel that our budget request must present three basic items of information:

(1) Proof that local Indian people did participate as decision-makers, in preparation of the JOM Program for their school district.

(2) Proof that funds were expended in accordance with an approved program.

(3) An evaluation of the effectiveness of these programs--did they accomplish their purposes? What improvements are suggested for the future?

We recognize the difficulties in this kind of reporting, but will attempt to require less volume of information, and still insure that we have on hand enough information to fairly present a budget request for sufficient funds to operate a totally adequate program.

If you have comments on the above information, please submit them to the Branch of Public School Assistance in Albuquerque.

We have now received our request for the special information which we will need by February 15.

Director of Education Programs

Enclosure

IN REPLY REFER TO

5

Education

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS
DIVISION OF EDUCATIONAL ASSISTANCE
5301 CENTRAL AVENUE, N. E., ROOM 201
ALBUQUERQUE, NEW MEXICO 87108

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June 26, 1973

Memorandum

To: All Area Directors
Attention: Assistant Area Director (Education)

From: Chief, Branch of Public School Assistance

Subject: JOM Contracts

The Department of Interior, Office of Survey and Review Auditors are in the process of auditing the Bureau's JOM State Contracts.

The Auditors' reports were very critical of the JOM contracts that have been executed for those states and School Districts that were audited. We were unofficially informed that the contracts were "too loosely" written to comply with the JOM Act or needs of the Bureau.

For your information and guidance in negotiating future contracts with the State, School Districts, and Tribal Groups the following should be part of the contracts:

General Provisions
- Definitions
- Changes
- Extras
- Disputes
- Termination for Default or for Convenience of the Government
- Certificate of Current Cost or Pricing Data
- Examination of Records by Secretary of Interior
- Examination of Records by Comptroller General
- Covenant Against Contingent Fees
- Officials not to Benefit
- Workmen's Compensation Laws
- Convict Labor
- Equal Opportunity

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Special Johnson-O'Malley Programs
- Definition
- Objective
- Scope
- Operation and Programs
- Business Service
- Payments
- Contract Period
- Funding of Contract
- Inspection of Programs

Plan of Operation
- Purpose
- Authority
- Policy

Exhibits
- Johnson-O'Malley Budget Requests
- Proposed Contract with School Districts
- Certification

Miscellaneous Exceptions
- Documentation of JOM Need to be part of Contract
- Some JOM Contracts have not taken into consideration Carryover Funds
- Pre-audit of Contracts - Areas should take advantage to prevent exceptions
- OMB Circular A-87 - regarding Equipment purchased from JOM Funds
- JOM Funds used for expenses other than JOM
- Audit - Will be conducted by BIA authorized Representative
- Ineligible School Districts receiving JOM Funds
- Some Districts not taxing at required rate

Charles A. Richmond

APPROVED:

Acting Administrator, Indian Education Resources Center

(6)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR 33]

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ENROLLMENT OF INDIANS
IN PUBLIC SCHOOLS

Revision of Part

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938).

Notice is hereby given that it is proposed to revise Part 33, Subchapter E, Chapter I, of Title 25 of the Code of Federal Regulations. This revision is proposed pursuant to the authority contained in section 3 of the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452-456).

The purpose of this revision is to clarify the eligibility requirements for educational programs for Indian students in public schools to be funded under these regulations.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed revision to the Commissioner of Indian Affairs, Attention: Director of Indian Education Programs, Washington, D. C. 20245, within 30 days after date of publication of this notice in the Federal Register.

It is proposed to revise Part 33, of Chapter I, Title 25, of the Code of Federal Regulations to read as follows:

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Part 33 - Enrollment of Indians in Public Schools

Sec.
33.1 Definitions
33.2 Contracts
33.3 State School Laws
33.4 General Requirements for Contracts
33.5 Public School use of Federal Property

Authority: The provisions of this Part 33 issued under sec. 3, 48 Stat. 596, as amended; 25 U.S.C. 454, unless otherwise noted.

§33.1 Definitions.

Whenever used in this part, the terms defined in this section shall have the meaning herein stated:

(a) "State" means a State of the United States of America or any subdivision thereof.

(b) A "school district" is the local unit of school administration as defined by the laws of the State in which it is located.

(c) An "Indian" is an individual who is a member of a tribe, band, or other organized group of Indians, including Alaska Natives, which is recognized by the Secretary of the Interior as being eligible for Federal Services.

(d) An "Indian Advisory School Board" is a board elected by Indian parents within a school district to meet with the elected district school board to assist in planning for expenditure of funds received by the school district for education of eligible Indian students.

§33.2 Contracts.

(a) Contracts may be entered into under the provisions of

the Act of April 16, 1934 (48 Stat. 596) as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452-456) with authorities of a State, or school district, or Corporation for the education of Indian children, of 1/4 or more degree Indian blood, unless excepted by law, in grades Kindergarten through 12. Monies appropriated by Congress for such purposes can be expended only in eligible public school districts containing large tracts of non-taxable Indian-owned land and educating large numbers of eligible Indian children, as compared to the total school population.

(b) The contracts may authorize payments for Educational Programs in two categories: (1) In support of the basic school program offered to all students, to meet educational standards established within the State, only if authorized by the Education Plan, and only if a school district's financial need is proven, after consideration of all income, including income from P.L. 874, 81st Congress (64 Stat. 1100) as amended. (2) In payment for the costs of providing supplemental programs to meet the special needs of Indian students, as determined by the Indian Advisory School Board, which may result from the financial status of the parents, or from cultural and language differences, and where such programs are necessary so that Indian students can benefit from the basic educational programs equally with non-Indian students.

(c) Program operations conducted through contracts under this part must be conducted for the primary benefit of eligible Indian students enrolled in eligible public school districts.

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§33.3 State School Laws.

All Indians, as citizens of the State wherein they reside, shall be amenable to the school laws of such State. Employees of any State may be permitted to enter upon Indian tribal lands, reservations, or allotments therein

(a) to inspect educational conditions or,

(b) to enforce the penalties of State compulsory school attendance laws against Indian children, and parents, or other persons in loco parentis, except that the provisions of this section shall not apply to Indians of any tribe in which a duly constituted governing body exists until such body has adopted a resolution consenting to such application.

§33.4 General Requirements for Contracts.

(a) Educational Plan. To become eligible to administer the contract funds, the contractor shall formulate an operational plan for distribution of contract funds, such plan to become a part of the contract.

(b) Budget Estimates and Reports. Each contractor shall submit such budget information as is necessary in order to determine eligibility to receive funds. This information shall include estimates of receipts of funds from all sources, and if supplemental funds are requested for special need programs, shall specify program items for which funds from this program shall be expended.

(c) Equal Educational Opportunities. Contracts shall specify that all school districts receiving funds under the provisions of

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this part shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students. School districts receiving funds under this part shall receive all aid from other sources to which other similar schools are entitled to receive. In no instance shall there be discrimination against Indians or schools enrolling such Indians.

(d) Educational Standards. The school district serving Indian students shall provide educational programs required by established State standards.

(e) Inspection of programs. Schools in districts receiving funds under this part shall be open to visits for purposes of program audit and inspection by duly accredited representatives of the Federal government and the contracting agency.

§33.5 Public School Use of Federal Property.

The use of federally-owned facilities for public school purposes may be authorized when not needed for Federal activities. Transfers of title to such facilities may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41).

(a) Insurance covering nonexpendable property. When non-expendable Government property is turned over to public school authorities under a permit, the permittee shall insure such property against damage by fire, windstorm, and tornado in amounts and with companies satisfactory to the superintendent or officer in charge of the Indian agency responsible for the property. In case of damage or destruction of such property by fire, windstorm, or

tornado the insurance money collected shall be expended only for repair or replacement of property; otherwise insurance proceeds shall be remitted to the Bureau.

(b) Maintenance of Building. The permittee shall maintain the property in a reasonable state of repair.

(Sgd) Morris Thompson

Commissioner

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DRAFT: GEORGE SCOTT 4/20/74

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Proposed Revision Part 33, Chapter I, Title 25, Code of Federal Regulation to read as follows:

[PART 33 -- Special Programs for the Education of Indian Children]

REVISE: The changing of this Title reflects a more appropriate direction and intent that even pre-dates the passages of this Act. 1/ Furthermore, the Comptroller General of the United States makes the point that JOM money is intended for "Special Programs." 2/ The Act does not limit contracts to Public Schools only, the Act reads, "with any State or Territory, or political subdivision thereof, or with any State University, College, or School, or with any appropriate State, or private corporation, agency or institution." 3/ See also the agreement and judgment in Denetclarence v. Board of Education, U.S. District Court, District of New Mexico, No. 8872.

1/ Johnson-O'Malley Act - 73 Cong., 2nd Sess., Chs. 146-1481 April 16, 1934.

2/ "Administration of Program For Aid to Public School Education of Indian Children Being Improved", Report to the Congress, By the Comptroller General of the United States, May 28, 1970.

3/ See JOM Act, as amended June 4, 1936.

Section

33.1 Definitions.

33.2 Contract Eligibility.

33.3 Community Participation.

33.4 General Requirements for Contracts.

33.5 State School Laws.

33.6 Public School Use of Federal Property.

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AUTHORITY: The provisions of this Part 33 issued under Sec. 3, 48 Stat. 596, as amended; 25 U.S.C. 454, unless otherwise noted.

§ 33.1. Definitions.

Whenever used in this part the terms defined in this section shall have the meaning herein stated:

(a) "State" means a State of the United States of America or any subdivision thereof.

(b) A "school district" is the local unit of school administration as defined by the laws of the state in which it is located.

(c) An "Indian" is an individual who is a member of a tribe, band, or other organized group of Indians, including Alaska Natives, which is recognized by the Secretary of the Interior as being eligible for Federal Services [throughout the United States.]

Revise: Include "throughout the United States." this would broaden the eligibility of service population but this would not necessarily mean funds would be provided. This would be limited by the appropriation of funds and the priorities based on guideline for distribution of funds.

The Lay-Richmond draft contends that this means, ... "liberally interpreted, make it possible to pay for services provided to eligible Indians wherever they live." Yes, but only when Congress has appropriated enough funds and only when priority distribution of funding guidelines has been adheared to.

Furthermore, Morton v. Ruiz states ..."We need not approach the issue in terms of whether Congress intended for all Indians, regardless of residence and of the degree of assimilation, to be covered by the general assistance program. We need only ascertain the intent of

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Congress with respect to those Indian claimants in the case before us. The question, so limited, is whether Congress intended to exclude from the general assistance program these respondents and their class, who are full-blooded, unassimilated Indians living in an Indian community near their native reservation, and who maintain close economic and social ties with that reservation." 4/ Also in the same opinion we find ..."In order for an agency interpretation to be granted deference, it must be consistent with the Congressional purpose. Espinoza v. Farah Manufacturing Co., 414 U.S. ---(1973); Red Lion Broadcasting Co. v. FCS, 395 U.S. 367, 381 (1969). "It is evident to us that Congress did not itself intend to limit its authorization to only those Indians directly on, in contrast to those 'near', the reservation, and that, therefore, the BIA's interpretation must fail." 5/

When the JOM legislation was originally passed in 1934, the Senate Committee Report stated that the Act was intended to provide assistance for Indians in "those States in which the Indian tribal life is largely broken up and in which the Indians are to a considerable extent mixed with the general population". 6/ The Committee Report then dealt specifically with the question of education and indicated that JOM funds were intended to be used in non-reservation areas as well as in reservation areas: "The Indians in these sections are largely mixed with the white population, and it becomes advisable to fit them into the general public school scheme rather than to provide separate schools for them".

4/ See Morton v. Ruiz, 27-1052 -- Opinion, p. 11.

5/ See Morton v Ruiz, 72-1052 -- Opinion, pp. 37-38.

6/ See S. Rep. 311, 73rd Cong., 2nd Sess. 1 (1934).

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Recent Congressional intent is precisely the same. In 1972, the Senate Appropriations Committee unequivocally directed the Secretary of the Interior to make "special efforts to make JOM funds available in allocations whether or not there are large areas of tax-free Indian lands". 7/ In the same report, the Committee "directs that the Secretary prepare a plan to assure Bureau of Indian Affairs type services to all Indians in the United States -- rather than just to those living 'on or near' reservations".

Because of the specific legislative history set forth above, it would be illegal for the BIA to limit JOM programs to areas on or near reservations.

The change proposed in these regulations will not result in any major shift in expenditures from reservation areas to urban areas. In addition, only BIA - eligible children can be counted for JOM assistance. The question is, do we follow the intent of Congress or Departmental policy?

(d) An "Indian Advisory School Board" is a board elected by Indian parents within a school district as described more fully in Sec. 33.3 of this part to plan, program, review, and evaluate programs for education of eligible Indian students.

(e) "Commissioner" means the Commissioner, Bureau of Indian Affairs.

(f) "Basic support payments means payments made in support of school operational costs in order to meet minimum educational standards established by the State.

(g) "Special and Supplemental" are programs supplemental to basic school operational programs, and which enable eligible Indian students to benefit adequately from the basic educational program.

7/ S. Rep. 921, 92nd Cong., 2d Sess. 6 (1972).

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(h) An "Indian Corporation" is a corporation which is controlled by a majority of Indians and which is chartered under State law or under Tribal authority.

(i) An "Educational Plan" is a plan for the programmatic accountability and expenditure by a contractor of funds appropriated for education of eligible Indian students under this part.

[(j) "Educational Agency" means any state, school district, state university or college, state or federal corporation, Indian tribe, intertribal corporation, Indian corporation, corporation chartered or created by an Indian tribe, any public or private Indian controlled school or institution.

Revise: To define "Educational Agency" is very essential under this part. No matter how rational or consistent with congressional intent a particular decision might be, the determination of eligibility cannot be made on an ad hoc basis by the dispenser of the funds.

The Administrative Procedure Act was adopted to provide, inter alia, that administrative policies affecting individual rights and obligations be promulgated pursuant to certain stated procedures so as to avoid the inherently arbitrary nature of unpublished ad hoc determinations. 8/

The addition of .."any public or private Indian controlled school or institution." would further advance local control and Indian self-determination.

The Lay-Richmond draft raises a number of questions to this addition. Why would we want to limit expenditure to programs operated through public school districts? Is this not opposed to Indian self-determination?

8/ See, generally, S. Rep. No. 752, 79th Cong., 1st Sess., 12-13 (1945); H.R. Rep. No. 1980, 79th Cong. 2d Sess., 21-23 (1946).

Since most public or private Indian controlled schools or institutions are 100% Indian students, who else would be more qualified to receive assistance under JOM?

They also say, that money appropriated under this particular line item cannot be used for another purpose, unless specific authority is obtained from the Appropriations Committee. Then the only change that needs to be made is a simple request from the Office of Education Programs, Bureau of Indian Affairs to cover other types of institutions, as defined under this part.

Is it not a fact, that all contract schools would be funded by a line item in the BIA Education appropriation and must also follow the regulations and guidelines for funding under JOM? I do not see where a contract school could receive full funding under JOM unless the regulation so stated.

I would like more specific information on the number of denominational schools "on or near" reservations as expressed in the Lay-Richmond draft before commenting on this point.

§ 33.2 Contract Eligibility.

(a) Contracts may be entered into under the provisions of the Act of April 16, 1934 (48 Stat. 596) as amended by the Act of June 4, 1936 (49 Stat. 1458; 25 U.S.C. 452-456) with authorities of any "educational agency" for the education of Indian children, of 1/4 or more degree Indian blood, in [pre-school] through grade 12. Monies can be expended [only by an Educational Agency] with an eligible Indian enrollment and who are recognized by the Secretary of the Interior as being eligible for Federal services because of their status as Indians.

Revise: Under this part, eligibility for service is extended to include "pre-school" students. My first comment would be to take exception with the Lay-Richmond feeling that JOM funds are intended for

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public schools only. JOM is intended for the education of Indian children and not intended for public schools. Furthermore this change would avoid duplication with Title IV, which is limited to "elementary and secondary programs". 9/ The limitation as to grade twelve is found in subsection 33.2(a) of the 1974 Proposed Rules and is reasonable in light of the existing BIA assistance for post-secondary education.

The provision permitting the expenditure of JOM funds outside the formal school system is necessary, because it gives parent groups autonomy from the local school system, and reinforces the President's message on July 8, 1970, on self-determination.

(b) The contracts may authorize payments for Educational Programs in two categories in the [following priority:] (1) In payment for the costs of providing supplemental programs to meet the special needs of Indian students, as determined in the Indian Advisory School Board, which may result from the financial status of the parents, or from cultural and language differences, so that Indian students can benefit from the basic educational programs of a school district equally with non-Indian students. (2) In support of the basic school program offered to all students, to meet educational standards established within the state, only if authorized by the Education Plan, in writing, and only under extraordinary or exceptional circumstances. The contracts may authorize payments when: (a) evidence of a reasonable tax effort; (b) exhaustion of all other sources of financial aid, including PL-874 (c) additional costs incurred by the school due to isolation factors; [(d) a certain percentage (85%)]

9/ See, 20 U.S.C. § 245 aa(a).

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of eligible Indian enrollment. Such payments will not be made unless a school district's financial need is proven, after consideration of all income, including income from P.L. 874, 81st Congress (64 Stat. 1100) as amended, and only if there is evidence of reasonable tax effort by the school district. The Area Director may recommend to the Commissioner that an exception be made to this requirement at the request of the Indian Advisory School Board and with submission of proof that the school cannot operate efficiently without using basic support funding from this Act.

Revise: A major disagreement with the Lay-Richmond draft is placing "Special and Supplemental" programs as having the first priority and "basic support payment" second priority. I base this change on the following examples:

(1) This complies with Natonabah v. Board of Education, 355 F. Supp. 716, 726 (D. N. M. 1973), holding that, except under exceptional circumstances, Johnson-O'Malley funds msut be expended for the "Special Needs" of Indian children.

(2) Agreement and Judgment in Denetclarence v Board of Education, U.S. District Court, District of New Mexico, No. 8872. The agreement refers to the fact that JOM funds must be used for supplemental, special programs and not for general aid. (See, Section 13 through 19). Thus the Agreement affirms the holding in Natonabah v. Board of Education, 355 F. Supp. 716, (District of New Mexico, 1973). Again it is significant that the Department of Interior (i.e., the BIA) signed this Agreement, thereby ratifying the uses to which Johnson-O'Malley funds must be put.

(3) GAO's review conducted in Arizona, New Mexico, and South Dakota, found certain JOM program funds were used for normal maintenance and operations of public schools and were distributed on a formula or

entitlement basis which did not consider the ability of the school districts, the counties, and to some extent, the State to meet all or a portion of the costs of these operations. As a result, funds were provided to counties and school districts in Arizona where needs may not have existed and the funds may not have benefited Indian children from reservations but rather, may have reduced the local cost of educating all other children attending the public schools. 10/ The formula method for determining the amount of Federal financial assistance under the JOM program essentially eliminated any consideration of county and school district support of the school operating costs of educating eligible Indian children and has resulted in the JOM programs being administered on an entitlement basis rather than on a demonstrated or actual-need basis.

(4) The Arizona plan helps illustrate the problems of mislabeling by reference to a specific set of facts. Nearly $59 million of the almost $79 million in state school aid which was distributed by Arizona to county districts in 1965-66 was in form a simple flat grant of $170 per pupil in ADA. Arizona also has a foundation plan which guarantees an offering of $320 per common school pupil in ADA, and $445 per high school pupil in ADA; $12 million was paid by the State to local districts under its provisions. On the basis of these gross facts, Arizona was labeled a flat grant state by USOE. But this barely scratches the surface in describing what Arizona actually is doing.

10/ Report to the Congress, "Administration of Programs for Aid to Public School Education of Indian children Being Improved", by the Comptroller General of the United States, (May 28, 1970).

In Arizona, the basis for awarding foundation aid may be simplified as follows. Common school districts are given the difference, if any, between $320 per pupil in ADA and the sum of (1) the amount raised locally per pupil in ADA at the participation level of taxation and (2) $170 per pupil in ADA which is the amount awarded under the flat grant scheme. 11/ This is simplified; actually flat aid plus the local share plus special federal Indian education funds are deducted from $320 in common school districts and from $445 in high school districts in calculating the equalizing amount. They haven't changed much from 1965-66.

It is unfortunate that this state, which has a relatively small equalization task, has done so little. Why are states such as Arizona, with both kinds of grants, reluctant to shift to grants which are really only of an equalizing nature? Why are any dollars given to rich districts when the poor distrfcts are not yet equalized? The answer must lie in expedience, as it surely does not lie in fairness.

I believe the argument stated above why "Special and supplemental programs" should have first priority is more than justifiable.

(c) All funds under this part shall be distributed annually among the states and among the educational agencies within each state on an equitable basis. (1) All funds under this part shall be apportioned among all states on a substantially equal basis, based upon the number of eligible students for whom funds are sought, with allowance being made for the actual cost of delivering educational services in each state. For the purpose of determining the actual cost of delivering educational services in each state, the Commissioner shall refer to the average per-pupil expenditure

11/ Coons, Clune III, and Sugarman, Private Wealth and Public Education (1970) PP. 117-18.

of each state. (2) Absent special or exceptional circumstances, funds under this part shall be distributed among the educational agencies within each state so that each contracting educational agency will receive approximately the same amount for each eligible Indian student to be served under the contract. Commissioner may make exception due to the special cultural, social, linguistic, and educational needs of the community involved.

(d) Equal education opportunities: (1) Contracts shall specify that all school districts receiving funds under the provisions of this part shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students. School districts receiving funds under this part shall be managed in such a way that Indian children receive all aid from the State, and other proper sources other than this contract, which other schools in the district and other school districts similarly situated in the state are entitled to receive. In no instance shall there be discrimination against Indians or schools enrolling such Indians. (2) When informed by a complaint or through its own discovery that possible violations of Title VI of the Civil Rights Act of 1964 exist within a school district receiving Johnson-O'Malley aid, the Department of the Interior shall, in accordance with federal requirements: (i) notify the Department of Health, Education and Welfare of the possible violation of Title VI and pursuant to the Memoranda of Understanding between the Secretary of the Interior and the Secretary of the Department of Health, Education and Welfare conduct an investigation into the matters alleged. (ii) If the report of investigation conducted by the Department of Health, Education, and Welfare in (i) above discloses a failure or threatened

failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue financial assistance under the Johnson-O'Malley Act or by any other means authorized by law. As delineated in 43 CFR Part 17.1, 17.8 and 17.9, such other means may include reference to the Department of Justice with a recommendation that appropriate legal proceedings be brought by the United States to secure compliance or by formal hearing before the head of the bureau or office administering the federal financial assistance, or at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act. The Secretary of Interior may, by agreement with one or more other Federal departments, provide for the conduct of consolidated or joint hearings as prescribed in 43 CFT Section 17.8(e).

(e) Programs conducted through contracts under this part must be designed for the primary benefit of eligible Indian students.

§33.3 Community Participation.

(a) Parental involvement at the local level is an important means of increasing the effectiveness of programs provided by funds under this part. Accordingly, it is the policy of the Commissioner, in regard to funds distributed under this part, to require the maximum participation by the community affected. Such participation shall include, but shall not be limited to, the provisions of this section. In the case of contracts with Indian Corporation, all provisions of this part relating to Indian Advisory Board shall be required.

(b) Each educational agency, receiving funds under this part shall provide for the establishment of an Indian Advisory Board for each

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community affected. All members of each Indian Advisory Board shall be selected pursuant to subsection 33.3(c) of this part. Each educational agency may expend an appropriate amount of funds for conducting elections of an Indian Advisory Board, for attendance at state-wide meetings, workshops, board training and for other reasonable expenses incurred by an Indian Advisory Board and in the planning, development, evaluation and monitoring of programs funded under this Act.

(c) All Indian Advisory Boards shall be nominated and selected by procedures determined by the Indian community affected, such as sanction by the tribal governing body where necessary. Members shall be selected be the Indian people in the community affected, and, where the program or project will serve secondary school students, Indian secondary school students. Selection of members shall not limit the continuing participation of the Indian community in the operation and evaluation of the program. Each member shall be designated by name and address in the application.

(d) Each Indian Advisory Board shall be authorized to: (1) make an initial assessment of the needs of Indian children in the community affected, (2) participate in negotiations concerning contracts under this part, (3) participate in the planning, development, evaluation, and monitoring of programs, (4) hear complaints by Indian students and their parents, (5) meet regularly with the professional staff serving Indian children and with the local educational agency, (6) hold all Board meeting open to the public, (7) have final sign-off authority on all programs and expenditure of funds, (8) establish rules for conducting its offices, and (9) have such additional powers as are consistent with these regulations.

Revise: The exclusion of "community participation" as generally practiced now and or described in the Lay-Richmond draft, guarantees both unilateral school control and lack of accountability. In the Lay-Richmond

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draft "community participation" is a very weak concept.

There is one clear way to avoid meaningless participation, obtain accountability (both programmative and fiscal) and produce actual cooperation through the local parental organization. Give specific authority to local parental groups and let them determine how the money will be used and whether or not it has been used properly and wisely. If a school can deliver what the parents want, they will get their funds, if not, the parents will use their funds for other educational programs: (1) their own community programs; (2) contract schools; (3) Bureau schools. This is a built-in, bilateral arrangement. The parents and the schools now have mutual dependency (a first; up to now, only the parents have been dependent).

A great deal of planning in Indian education has always been done with the assumption that Indian parents somehow care less about their kids, less than other parents, less than local educators, less than the planners. If you don't reject that, there's not much point in worrying about Indian education. But if you feject this, if you have confidence in the interest of the parents, then allow them to make choices. We don't need ongoing debates as to school performance. Parents can decide who comes closest to doing what they want, and they can back their decisions with Johnson-O'Malley funds. There is no doubt that you must have the <u>involvement</u> and cooperation of parents if the Johnson-O'Malley program is to represent both a decision and a commitment.

I cannot accept the assumption in the Lay-Richmond draft that ..."the majority of the members of the elected school board are Indians", Documentation would be needed to back up their claim.

If we believe in the concept of Advisory Boards, then, they should also be able to approve a need for "basic support" and not just "special

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of their children, so why shouldn't they decide in both areas?

The Lay-Richmond draft takes exception and questions the interest of the Indian parents and their willingness to participate. They also state: "On the other hand, Mr. Scott's proposal seems to assume that the Indian parents want to participate, but are prevented from doing so by the non-Indian school board. This has not been our experience". Maybe Mr. Lay and Mr. Richmond have had unique experiences that I have not, but the majority of advisory boards have indicated opposite experiences. I also believe in the two-way street system, but my experience has been that the elected school boards' way was just about the only way.

If adequate participation of Indian advisory school boards or just plain parents was realized, situations like Hammon, Oklahoma or Duckwater, Nevada would not exist.

We may not be able to legislate effective participation or cooperation but one thing is obvious -- we must give the Indian advisory school board every chance possible.

§33.4 General Requirements for Contracts.

(a) Educational Plan. To become eligible to administer the contract funds, the contractor shall formulate a programmatic operational plan for awarding of contract funds to each eligible contractor. Such plan shall become a part of the contract. Programs shall be designed to meet the special needs of Indian students, which may result from the financial station of their parents, from cultural and language differences, or from other factors. Such funds shall supplement, and not supplant, state and local funds. Each contract shall require that the use of these funds will not result in a decrease of state, local or other federal funds for Indian children which, in the absence of funds under this part, would be made available for Indian children.

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(b) Budget Estimates and Financial Information. For each school district receiving funds under the contract, the contractor shall submit to the Commissioner, or his authorized representative such budget information as is necessary in order to determine eligibility to receive funds. If funds are sought for basic support services, the contractor has the burden of meeting the standards established by 33.2(b)(2), (a,b,d,d). This information shall include records of receipt of funds from all sources, and if supplemental funds are requested for special need programs, shall specify line items in each school district's program for which funds from this program be expended. When supplemental funds are sought, full information on programs funded from other supplemental sources shall be furnished. Formal written findings shall be made by the Area Director and incorporated into the contract.

(c) Reporting. Information shall be furnished by the contractor as to the type of expenditure for which reimbursement is sought under the terms of the contract. An adequate accounting system shall be maintained that enables identification of expenditures of funds contracted for under this section.

(d) Educational Standards. School contracts serving Indian students shall provide the minimum educational programs required by established State standards.

~~(e) Staff. Special consideration for the selection of personnel shall be given to those individuals with special expertise in the areas of culture, customs, social, and language, etc. Academic requirements need not be a factor under this Act.~~

(f) Inspection of Programs. Schools or contractors receiving funds under this part shall be open to visits for purposes of program audit and

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inspection by duly accredited representatives of the Federal government and the contracting agency. The contractor shall furnish the Area Director with a detailed report from each participating educational agency, describing the accomplishments during the previous school year, due before October 15 each year, which shall contain an evalaution of the effectiveness of the program. The Area Director shall addit program effectiveness and the financial expenditure for each such contract during the first half of each contract year.

(g) Each contract shall include provisions that the educatinal agency will comply in full with the requirements concerning community participation, as set forth in subsection 33.3 of this part.

(h) The contract shall provide that all educational agencies receiving funds under this part will be open to visits and consultations by duly-accredited representatives of the federal government, by parents in the community affected, and by tribal representatives.

(i) All contracts, records, reports, budgets, budget estimates, plans, and other documents pertaining to the administration of the program shall be provided to each member of the Indian Advisory Board by the educational agency. Such documents shall be made available, upon request, to members of the public by educational agencies and by local school officials for inspection. Educational agencies and local school officials shall provide, free of charge, single copies of such documents upon request.

§33.5 State School Laws.

State employees may be permitted to enter upon Indian tribal lands, reservations, or allotments if the duly constituted governing body of the tribe adopts a resolution of consent, for the purpose of:

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(a) Inspection of educational conditions in the public schools located thereon; (b) to enforce state compulsory school attendance laws against Indian children, parents, or other persons in loco parentis.

§33.6 Use of Federal Property.

The use of federally-owned facilities for public or private school purposes may be authorized when not needed for Federal activities. Transfer of title to such facilities may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41).

(a) Insurance covering nonexpendable property: When nonexpendable Government property is turned over to public or private school authorities under a permit, the permittee shall insure such property against damage by fire, windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the superintendent or officer in charge of the Indian Agency responsible for the property. In case of damage or destruction of such property by fire, windstorm, vandalism, snow, or tornado the insurance money collected shall be expended only for repair or replacement of property; otherwise, insurance proceeds shall be remitted to the Bureau of Indian Affairs.

(b) Maintenance of Building: The permittee shall maintain the property in a reasonable state of repair consistent with intended use and educational purposes.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

IN REPLY REFER TO:
Office of Indian
Education Programs

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April 17, 1974

Memorandum

To: Dr. William J. Benham
Acting Director, Office of Indian Education Programs

From: Brice L. Lay, Chief, Division of Educational Assistance
Charles Richmond, Chief, Branch of Public School Assistance

Subject: Revised draft - Johnson-O'Malley Regulations

In our meeting with Mrs. Holmgren and Mr. Scott, we reached general agreement on the revision of Johnson-O'Malley regulations, except for:

(1) Eligibility

(2) Community (Indian) participation

It was agreed that Richmond and Lay would submit a draft which would be almost identical to Mr. Scott's draft, except for a full explanation of the recommended wording on these two points.

Attached is a copy of our draft. With the exception of the definitions for eligibility, and references to the formula, our draft is much like the initial Committee draft, written with participation by the Solicitor's Office.

We feel that the Solicitor can approve our draft for legality.

Brice L. Lay

Charles Richmond

Attachment

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Draft

It is proposed to revise Part 33, of Chapter I, Title 25, of the Code of Federal Regulations to read as follows:

Part 33 - Enrollment of Indians in Public Schools

Rule out Capital Act Dist Service etc

Sec.

33.1 Definitions

33.2 Contracts

33.3 State School Laws

33.4 General Requirements for Contracts

33.5 Public School use of Federal Property

3,48 Stat. 596, as amended; 25 U.S.C. 454, unless otherwise noted.

§33.1 Definitions.

Whenever used in this part, the terms defined in this section shall have the meaning herein stated:

(a) "State" menas a State of the United States of America or any subdivision thereof.

(b) A "school district" is the local unit of school administration as defined by the laws of the State in which it is located.

(c) An "Indian" is an individual who is a member of a tribe, band, or other organized group of Indians, including Alaska Natives, which is recognized by the Secretary of the Interior as being eligible for Federal Services. and is presently receiving such services.

(Mr. Scott's draft would add at this point the words "throughout the United States."

Then on 33.2 (a) Contract Eligibility, this would broaden the authority to include contracts to areas other than "on or near reservations." Following is our analysis of the reasons why we feel eligibility should not be broadened beyond present Departmental policy:

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On the matter of eligibility, there is general agreement that the existing regulations are too restrictive. A school district establishes eligibility to receive funds, and under present regulations a school district must contain large tracts of non-taxable, Indian-owned land. This restriction can possibly make ineligible for JOM services some Indians who are eligible for other BIA services. In some instances, Indian students might be eligible to attend BIA operated schools, but the school district might not be eligible for JOM funding, because of the above restriction.

Therefore, the draft prepared by the Committee would remove the trust land restriction, and would make eligible for funding programs operated in school districts serving eligible Indian students. Eligible Indian students would be defined as those residing on or near reservations and ~~eligible for other Federal~~ BIA services because of their status as Indians.

It would seem that Mr. Scott's draft would, liberally interpreted, make it possible to pay for services provided to eligible Indians wherever they live.

This would seem to be in conflict with established Departmental policy. On March 30, 1972, Mr. Frank Carlucci, Associate Director of OMB, in a letter to Mr. Harrison Loesch, Assistant Secretary of Interior, stated "..., it appears controlling that Indian needs on-reservation are sufficiently great that resources available to BIA should not be dissipated elsewhere."

In Mr. Loesch's memorandum of April 4 to the Departmental Policy Committee, he stated, "It appears that this administration is reiterating the position the President took in his message to Congress that the Bureau of Indian Affairs is not to dissipate it's resources elsewhere than to serve the reservation Indian population."

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In the President's Message to the Congress of the United States on new policies and goals for American Indians, July 8, 1970, he states, "The Bureau of Indian Affairs is organized to serve the 462,000 reservation Indians. The BIA's responsibility does not extend to Indians who have left the reservation Indians. The BIA's responsibility does not extend to Indians who have left the reservation, but this point is not always clearly understood. "..... ..... "In a joint effort the Office of Economic Opportunity and the Department of Health Education and Welfare will expand support to a total of seven urban Indian major cities which will act as links between existing Federal, State and local service programs and the urban Indians" .... "I am directing the Office of Economic Opportunity to lead these efforts." "..."

Limitations on eligibility imposed in the draft prepared by the Committee seems to be in line with the recent Ruiz (Papago) decision.

In summary, it seems clear that present eligibility requirements should be liberalized, but we should not expand this eligibility to go beyond established policy.

(d) An "Indian Advisory School Board" is a board elected by Indian parents within a school district to meet with the elected district school board to plan, review, and evaluate programs and audit the expenditure of funds received by the school district for education of eligible Indian students.

(e) "Commissioner" means the Commissioner, Bureau of Indian Affairs.

(f) "Basic support payments" means payments made in support of school operational costs in order to meet educational standards established by the State.

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(g) "Special need programs" are programs supplemental to basic school operational programs, and necessary to enable eligible Indian students to benefit adequately from the basic educational program.

(h) "Area Director" means the director of the Bureau of Indian Affairs Area Office to whom the proposal to contract for the educational services is presented.

(i) An "Indian Corporation" is a group of Indians chartered as a corporation under State law or under Tribal authority.

(j) An "Educational Plan" is a plan for expenditure by a contractor of funds appropriated for education of eligible Indian students in public school districts.

(2. Mr. Scott's draft would add the following definition:

"Educational Agency "means any state, school district, state university or college, state or federal corporation, Indian tribe, inter-tribal corporation, Indian corporation, corporation chartered or created by an Indian tribe, any public or private Indian controlled school or institution.'

We do not feel that an "Educational Agency" can be defined in this language. We have had lengthy conversations with representatives from the Solicitor's Office on this matter. They have now agreed that the Indian contractor does perform certain services connected with education--but they have <u>not</u> agreed that they are an <u>educational agency</u>. We do not believe we need to raise this issue at all and have deleted any further references to to educational agency.

Also, Mr. Scott makes reference to "any public or private Indian controlled school or institution." We had thought that this was to be deleted, but if not, we wish to include the following comments:

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Mr. Scott's draft would make it possible to contract funds under this part for expenditure in private or contract schools. The draft proposed by the Committee would limit expenditure to programs operated through public school districts.

The Johnson-O'Malley Act does provide very broad contracting authority, and contracts for law and order, health services, etc., are signed using this authority. However, funding for these contracts, other than public school education, does not come from the appropriation approved for education of Indians in public schools. The appropriation bill each year approves a line item for education of eligible Indians in public schools -- and in the minds of the Congressional committees and the general public, this is "Johnson-O'Malley" money. However, money appropriated under this particular line item cannot be used for any other purpose, unless specific authority is obtained from the Appropriations Committee.

There is also a line item in the BIA education appropriation for contract schools. If funds are to be provided under contract for other than public school operations, it would seem that it should be funded from this line item.

Another factor should be seriously considered -- denominational schools are generally experiencing financial difficulties. Indian people, whose families are closely tied to these schools, want to keep the schools open. Indian groups are being offered opportunities to take over operation of these schools under contract. These schools receive no tax money, no state aid, no PL 874 payments, etc.

If they apply for JOM funding, they will apply for <u>total</u> funding -- <u>not</u> supplemental funding. Many of these schools have dormitory facilities, and the per pupil costs will be very high -- up to $1 million total in some

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instances. There are perhaps, 300 such schools on or near reservations, which could serve eligible Indians. If only 25 of these schools were fully funded this year, they could use the entire JOM appropriation. It would seem more logical to continue to fund approved contract schools under a line item specifically authorized for that purpose.

§33.2 Contract Eligibility

(a) Contracts may be entered into under the provisions of the Act of April 16, 1934, (48 Stat. 596) as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452-456) with authorities of a State, or school district, or Indian Corporation, for the education of eligible Indian ~~children~~, of ~~½~~ or more degree Indian blood, in grades Kindergarten through 12.

(3. In Mr Scott's draft, he has extended eligibility to "pre-school through grade 12."

We do not feel that this can be done, because pre-school is not a part of a public school program. Pre-school programs should be offered, and can be funded from a variety of sources (Headstart, Early Childhood, etc.), but could not be offered as a standard part of the elementary public school program. Therefore, we feel that pre-school (pre-kindergarten) services should be funded from other available sources, and not funded under the budget line item intended for public schools.)

(33.2 (a) Monies can be expended only in public schools districts with an eligible Indian enrollment of at least 3% or 10 Indian students, who reside within the exterior boundaries of a reservation or who are recognized by the Secretary of the Interior, in their present place of residence, as being eligible for ~~Federal~~ Bureau services because of their status as Indians.

(#4. This represents a change from Mr. Scott's draft, please refer to Insert # 1 on eligibility.)

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33.2 (b) The contracts may authorize payments for:

(1) Supplemental programs which have been approved by the Indian Advisory School Board to meet the special needs of Indian students.

(2) In support of the basis school program offered to all students, only if authorized in the Educational plan [33.3 (a)] and only under extraordinary or exceptional circumstances. The contract may authorize such payments only when the school district submits evidence of

(a) A reasonable tax effort + Eval children Stud
+ 874

(b) Full utilization of all other sources of financial aid, including all forms of state aid, Public Law 874 payments, etc.

(c) At least 70% eligible Indian enrollment within the school district, and

(d) Where applicable, additional operational costs incurred by the school district because of remoteness and isolation factors.

(e) The Area Director may request that the Commissioner allow basic support payments in other instances where proof is submitted that the school cannot operate effectively without reviewing such funds, and if the request is approved by the Indian Advisory School Board.

(#5 Insert. The above requirements will be implemented by a formula (explained in detail in the Manual) which will insure equitable distribution of funds, by considering variations in per pupil costs, funding received from other sources, etc.)

§33.3 General Requirements for Contracts.

(a) Educational Plan. To become eligible to administer the contract funds, the contractor shall formulate an operational plan for distribution of

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contract funds to each eligible school district. Such plan shall become a part of the contract.

Such funds shall supplement, and not supplant, state and local funds. Each contract shall require that the use of these funds will not result in a decrease in state, local, or other federal funds which, in the absence of funds under this part, would be made available for Indian children.

(b) Budget Estimates and Financial Information. For each school district receiving funds under the contract, the contractor shall submit to the Area Director such budget information as is necessary in order to determine eligibility to receive funds. If funds are sought for basic support services, the contractor has the burden of meeting the standards established by (1) 33.2 (a)(e).

If supplemental funds are requested for special need programs, shall specify line items in each school district's program for which funds from this source can be expended. When supplemental funds are sought, full information on programs funded from other supplemental sources shall be furnished. Formal written findings shall be made by the Area Director and incorporated into the contract.

(c) Reporting. Information shall be furnished by the school district as to the type of expenditure for which reimbursement is sought under the terms of the contract. An adequate accounting system shall be maintained that enables identification of expenditures of funds contracted for under this section.

(d) Educational Standards. School districts serving Indian students shall provide educational programs required by established State standards.

(e) Inspection of programs. Schools in districts receiving funds under this part shall be open to visits for purposes of program audit and

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inspection by duly accredited representatives of the Federal government and the contracting agency. The contractor shall furnish the Area Director with a detailed report from each participating school district describing the accomplishments during the previous school year, due before the October 15 each year, and which shall contain an evaluation of the effectiveness of the program. The Indian Advisory School Board shall participate in the preparation of the report. The Area Director shall audit financial expenditures and program effectiveness for each such contract during the first half of each contract year.

(f) Equal Educational Opportunities.

(1) Contracts shall specify that all school districts receiving funds under the provisions of this part shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students. School districts receiving funds under this part shall be managed in such a way that Indian children receive all aid from the State, and other proper sources other than this contract, which other schools in the district and other school districts similarly situated in the state are entitled to receive. In no instance shall there be discrimination against Indians or schools enrolling such Indians.

(2) When informed by a complaint or through its own discovery that possible violations of Title VI of the Civil Rights Act of 1964 exist within a school district receiving Johnson-O'Malley aid, the Department of the Interior shall, in accordance with federal requirements:

(i) notify the Department of Health, Education and Welfare of the possible violation of Title VI and pursuant to the Memoranda of Understanding between the Secretary of Interi or and the Secretary of the Dep artment of Health, Education and Welfare, recorded at 32 Fed. Reg. 6304 (1967), recommend that the

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the Department of Health, Education and Welfare conduct an investigation into the matters alleged.

(ii) If the report of investigation conducted by the Department of Health, Education and Welfare in (i) above discloses a failure or threatened failure to comply with this part, and if the non-compliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue financial assistance under the Johnson-O'Malley Act or by any other means authorized by law. As delineated in 43 CFR Part 17.7, 17.8 and 17.9, such other means may include reference to the Department of Justice with a recommendation that appropriate legal proceedings be brought by the United States to secure compliance or by formal hear ing before the head of the bureau or office administering the federal financial assistance, or at his discretion before a hearing examiner designated in accordance with one or more other Federal departments, provide for the conduct of consolidated or joint hearings as prescribed in 43 CFR Section 17.8(e).

(g) The contract shall provide that authorities of all school district receiving funds under this part shall be available for visits and consultations by duly accredited representatives of the federal government, the contractor, and the Indian Advisory School Board.

(h) All contracts, records, reports, budgets, program plans and other documents pertaining to the administration of the program shall be made available for inspection by the Indian Advisory School Board, School officials shall provide, free of charge, single copies of such documents upon request.

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(Insert #6. (Mr. Scott's draft includes a detailed section on Community and Parental Participation. Our proposal omits this as a section, but provides for such participation throughout the other sections, for these reasons:

While there is not great divergence of opinion on this element, there does seem to be a difference in philosophy. The Committee draft provides for the election of an Advisory School Board, which would work in cooperation with the elected school board. In many instances, the majority of the members of the elected school board are Indian, and in most instances, we believe that the goals of both groups will be the same.

The Committee draft requires Advisory Board approval of programs for expenditure of funds for special need (supplemental) programs. The Advisory Board also has authority to inspect performance under such programs. Further, the Committee draft, at the suggestion of the Department of Justice, provides safe-guards against discriminatory use of any educational funds.

The effectiveness of this participation, under the Committee proposal will depend on the interest of the Indian parents and their willingness to participate.

On the other hand, Mr. Scott's proposal seems to assume that the Indian parents want to participate, but are prevented from doing so by the non-Indian school board. This has not been our experience. It is doubtful that effective participation can be legislated or forced--certainly cooperation must be a two-way street--and Indian parents are now more concerned, and knowledgeable and are participating effectively. Forced participation and belligerant attitudes can only lead to confrontation, and to situations like Hammon, Oklahoma, or Duckwater, Nevada, where over the long haul, Indian students suffer.

The Committee draft has opened the door for effective Indian parental

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participation--and we feel that the climate is right for solid accomplishment in this respect.

§33.4 State School Laws. State employees may be p ermitted to enter upon Indian tribal lands, reservations, or allotments if the duly constituted governing body of the tribe adopts a resolution of consent, for the purposes of:

(a) Inspection of educational conditions in the public schools located thereon;

(b) to enforce State compulsory school attendance laws against Indian children, parents, or other persons in loco parentis.

§33.5 Public School Use of Federal Property. The use of federally-owned facilities for public school purposes may be authorized when not needed for Federal activities. Transfers of title to such facilities may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41).

(a) Insurance covering nonexpendable property. When nonexpendable Government property is turned over to public school authori ties under a permit, the permittee shall insure such property against damage by fire, windstorm, and tornado in amounts and with companies satisfactory to the superintendent or officer in charge of the Indian agency responsible for the property. In case of damage or destruction of such property by fire, windstorm or tornado the insurance money collected shall be expended only for repair or replacement of property; otherwise insurance proceeds shall be remitted to the Bureau.

(b) Maintenance of Building. The permittee shall maintain the property in a reasonable stat e of repair.

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Pres message 1972

Despite significant improvements in the past decade and a half, the health of Indian people still lags 20 to 25 years behind that of the general population. The average age at death among Indians is 44 years, about one-third less than the national average. Infant mortality is nearly 50% higher for Indians and Alaska natives than for the population at large; the tuberculosis rate is eight times as high and the suicide rate is twice that of the general population. Many infectious diseases such as trachoma and dysentary that have all but disappeared among other Americans continue to afflict the Indian people.

This Administration is determined that the health status of the first Americans will be improved. In order to initiate expanded efforts in this area, I will request the allocation of an additional $10 million for Indian health programs for the current fiscal year. This strengthened Federal effort will enable us to address ourselves more effectively to those health problems which are particularly important to the Indian community. We understand, for example, that areas of greatest concern to Indians include the prevention and control of alcoholism, the promotion of mental health and the control of middle-ear disease. We hope that the ravages of middle-ear disease – a particularly acute disease among Indians – can be brought under control within five years.

These and other Indian health programs will be most effective if more Indians are involved in running them. Yet – almost unbelievably – we are presently able to identify in this country only 30 physicians and fewer than 400 nurses of Indian descent. To meet this situation, we will expand our efforts to train Indians for health careers.

"Infant mortality is nearly 50% higher for Indians and Alaska Natives . . ." (Navajo, N. M.)

Our new census will probably show that a larger proportion of America's Indians are living off the reservation than ever before in our history. Some authorities even estimate that more Indians are living in cities and towns than are remaining on the reservation. Of those American Indians who are now dwelling in urban areas, approximately three-fourths are living in poverty.

The Bureau of Indian Affairs is organized to serve the 462,000 reservation Indians. The BIA's responsibility does not extend to Indians who have left the reservation, but this point is not always clearly understood. As a result of this misconception, Indians living in urban areas have often lost out on the opportunity to participate in other programs designed for disadvantaged groups. As a first step toward helping the urban Indians, I am instructing appropriate officials to do all they can to ensure that this misunderstanding is corrected.

But misunderstandings are not the most important problem confronting urban Indians. The biggest barrier faced by those Federal, State and local programs which are trying to serve urban Indians is the difficulty of locating and identifying them. Lost in the anonymity of the city, often cut off from family and friends, many urban Indians are slow to establish new community ties. Many drift from neighborhood to neighborhood; many shuttle back and forth between reservations and urban areas. Language and cultural differences compound these problems. As a result, Federal, State and local programs which are designed to help such persons often miss this most deprived and least understood segment of the urban poverty population.

This Administration is already taking steps which will help remedy this situation. In a joint effort, the Office of Economic Opportunity and the Department of Health, Education and Welfare will expand support to a total of seven urban Indian centers in major cities which will act as links between existing Federal, State and local service programs and the urban Indians. The Departments of Labor, Housing and Urban Development and Commerce have pledged to cooperate with such experimental urban centers and the Bureau of Indian Affairs has expressed its willingness to contract with these centers for the performance of relocation services which assist reservation Indians in their transition to urban employment.

These efforts represent an important beginning in recognizing and alleviating the severe problems faced by urban Indians. We hope to learn a great deal from these projects and to expand our efforts as rapidly as possible. I am directing the Office of Economic Opportunity to lead those efforts.

United States Department of the Interior

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OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

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APR 4 1972

Memorandum

To: Departmental Policy Committee
Under Secretary
Assistant Secretary - Program Policy
Assistant Secretary - Management and Budget

From: Assistant Secretary - Public La Management

Subject: Policy Decision Needed on Clien to be Served by Bureau of Indian Affairs

The Associate Director of OMB has just addressed the enclosed letter of March 30 to me on the above subject.

I am calling this to your attention as it bears directly on my memorandum of December 29, 1971, to the Policy Committee on this same subject. It appears that this Administration is reiterating the position the President took in his message to Congress that the Bureau of Indian Affairs is not to dissipate its resources elsewhere than to serve the reservation Indian population.

(Sgd.) Harrison Loesch

Harrison Loesch

cc: Commissioner of Indian Affairs

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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INTERIOR DEPT.
MAR 31 1972
ASSISTANT SECRETARY P.L.M.

MAR 30 1972

Honorable Harrison Loesch
Assistant Secretary of Interior
Washington, D.C. 20240

Dear Mr. Loesch:

Federal projects to meet the needs of urban Indians have reached the stage where evaluation can begin. This assessment will continue through FY 1973, as conclusions are reached on approaches for the future. So that these determinations may be made in an orderly manner, it is appropriate to reemphasize assignments of responsibility in respect to urban Indians.

As we recently discussed, the President in his July 8, 1970, Indian Message was explicit about the policy that needs of Indians living in urban areas are to be met through programs designed for disadvantaged groups in those areas. The principal effort cited is the OEO Model Urban Center project, soon to be under evaluation. Future urban Indian programs will result from lessons learned in the Center project. The President stated in his Message, "I am directing the Office of Economic Opportunity to lead these efforts."

The President stated further:

> "The BIA's responsibility does not extend to Indians who have left the reservation, but this point is not always clearly understood. As a result of this misconception, Indians living in urban areas have often lost out on the opportunity to participate in other programs designed for disadvantaged groups. As a first step toward helping urban Indians, I am instructing appropriate officials to do all they can to ensure that this misunderstanding is corrected."

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It is particularly important at this time for Federal officials involved to take positive steps to ensure that the misconception mentioned by the President is corrected. We believe that the July 8, 1970, Message envisages no extension of BIA services to Indians who have left the reservation. Without reference to BIA legal authority or eligibility of urban Indians for BIA services, it appears controlling that Indian needs on-reservation are sufficiently great that resources available to BIA should not be dissipated elsewhere.

I have asked OEO to inform you of progress in the Urban Center effort and to discuss with you any urban program developments which might have an effect on BIA programs on the reservations. I urge the Department of the Interior to apprise OEO of reservation programs impacting on the urban Indian situation or any other information which might be useful to OEO in fulfilling its lead responsibility in the urban Indian area.

Sincerely,

Frank C. Carlucci
Associate Director

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One of the most extensive and comprehensive research programs on Native education is in process in Alaska. The Alaska Native needs assessment program is being accomplished through the cooperative efforts of the State of Alaska, Native groups, students and the Bureau of Indian Affairs.

Two programs of self-evaluation and improvement of instruction have been incorporated as a part of the Muskogee Area program of educational accountability. The first, Instrument for the Observation of Teaching Activities, was officially implemented in September, 1973. Preliminary plans call for the official implementation of the second, Performance Evaluation for the Educational Leader, following an Area wide workshop in March of 1974.

NALAP (an acronym for Navajo Area Language Arts Project), a project to develop relevant second language learning materials for Navajo children, is in progress on the Navajo Reservation. NALAP materials have been field tested in twenty-two schools during the past two years. NALAP is a structual-sequential English language program which presents the grammatical structures of English in a sequence believed to be suitalbe for Navajo children learning English as their second language. The materials, through the use of numerous examples and meaningful activities, help children to internalize the structures of English by capitalizing on the thought process involved in language learning rather than on rote drill and model-mimicry. NALAP, Book I, containing ten units of 86 structural objectives has been revised and refined and will be used in over 50 per cent of Navajo Area schools during the 1973-74 school year. Additional units are also being developed.

In the area of research, a pilot project is in existence to determine success of pupils who learn to read initially in Navajo rather than English. This bilingual-bicultural program is in operation at Sanostee, Toadlena, Cottonwood, Greasewood and Pinon. Navajo is the language of instruction in this program. At the kindergarten and first grade levels, most of the instruction is in Navajo with time set aside for teaching English. At the first grade level, initial reading and writing is in Navajo. In the second and third grades, more English is used, and instruction is used in both languages.

B. Assistance to Public Schools: FY-1974, $25,352,000; FY-1975, $27,952,000; increase $2,600,000. The increase consists of:

	Increase (+) or Decrease (-) Amount	Positions	Total Program	Total Positions	Explanation
(1)	+$2,055,000	-	$27,952,000	-	To provide for increased enrollments in Johnson O'Malley assisted public schools.
(2)	+ 545,000	-	-	-	To partially offset cost of living increases.
	+$2,600,000	-			

Cost Factors Involved in Increases

(1) Anticipated enrollment increase of 7,500 students at an average cost of $274, per student.

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ment within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

(f) The contracts authorized under sections 102 and 103 of this Act and grants pursuant to section 104 of this Act may include provisions for the performance of personal services which would otherwise be performed by Federal employees: *Provided*, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individual.

(g) Contracts with tribal organizations and regulations adopted pursuant to this Act shall include provisions to assure the fair and uniform provision by such organizations of services and assistance to Indians in the conduct and administration of programs or activities under such contracts.

SEC. 107. (a) The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this title.

(b) (1) Within six months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall, to the extent practicable, consult with national and regional Indian organizations, to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall present the proposed rules and regulations to the Committee on Interior and Insular Affairs of the United States Senate and House of Representatives.

(3) Within eight months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall promulgate rules and regulations to implement the provisions of this title.

(c) The Secretary of the Interior and the Secretary of Health, Education, and Welfare are authorized to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations the respective Secretary or Secretaries shall, to the extent practicable, consult with appropriate national or regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

SEC. 108. For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this title, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on conduct of the program or service involved, and such other information as the appropriate Secretary may request. The reports and records of the Indian tribal organization with respect to such contract or grant shall be subject to audit by the appropriate Secretary and the Comptroller General of the United States.

SEC. 109. There are hereby authorized to be appropriated for the purposes of section 104 of this title the amount of $3,000,000 to the Department of the Interior and $2,000,000 to the Department of Health, Education, and Welfare for each of three succeeding fiscal years following the date of enactment of this Act.

SEC. 110. Nothing in this Act shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by any Indian tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

TITLE II—THE INDIAN EDUCATION ASSISTANCE ACT

SEC. 201. This title may be cited as the "Indian Education Assistance Act".

PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

SEC. 202. The Act of April 16, 1934 (48 Stat. 596), as amended, is further amended by adding at the end thereof the following new sections:

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"SEC. 4. The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by, the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contractor is capable of meeting such objectives.

"SEC. 5. (a) Whenever a school district affected by a contract or contracts for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have authority to approve or disapprove, programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation: *Provided, however,* That, whenever a local Indian committee or committees established pursuant to section 305(b) (2) (B) (ii) of the Act of June 23, 1972 (86 Stat. 235) or an Indian advisory school board or boards established pursuant to this Act prior to the date of enactment of this section exists in such school district, such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

"(b) The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a).

"SEC. 6. Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students.

"SEC. 7. There are hereby authorized to be appropriated for the education of Indians pursuant to this Act $65,000,000 for each of the fiscal years 1975 and 1976."

SEC. 203. After conferring with persons competent in the field of Indian education, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall prepare, and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives not later than October 1, 1974, a report which shall include:

(1) a comprehensive analysis of the Act of April 16, 1934 (48 Stat. 596), as amended, including—

(A) factors determining the allocation of funds for the special or supplemental educational programs of Indian students and current operating expenditures;

(B) the relationship of the Act of April 16, 1934 (48 Stat. 596), as amended, to—

(i) title I of the Act of September 30, 1950 (64 Stat. 1100), as amended; and

(ii) the Act of April 11, 1965 (79 Stat. 27), as amended; and

(iii) title IV of the Act of June 23, 1972 (86 Stat. 235); and

(iv) the Act of September 23, 1950 (72 Stat. 548), as amended.

(2) a specific program to meet the special educational needs of Indian children who attend public schools. Such program shall include, but need not be limited to, the following:

(A) A plan for the equitable distribution of funds to meet the special or supplemental educational needs of Indian children and, where necessary, to provide general operating expenditures to schools and school districts educating Indian children; and

(B) an estimate of the cost of such program;

(3) detailed legislative recommendations to implement the program prepared pursuant to clause (2); and

(4) a specific program, together with detailed legislative recommendations, to assist the development and administration of Indian-controlled community colleges.

PART B—PREPARATION OF PROFESSIONALS IN INDIAN EDUCATION

SEC. 204. (a) The Secretary is authorized to establish and carry out a program of making grants to, and contracts with, institutions of higher education and other

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APPENDIX B

U.S. DEPARTMENT OF THE INTERIOR.
OFFICE OF THE SECRETARY.
Washington, D.C., August 9, 1973.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to the request of Senator Abourezk, during the June 1 Indian Affairs Subcommittee hearings on S. 1017, S. 1310, S. 1312, and S. 1843, for a legal memorandum outlining the respective responsibilities of the Federal Government and the States for Indian education. No one entity—either the Federal Government or the States considered collectively—is solely responsible for the education of Indians. Rather, the responsibility is lodged with and exercised by both entities in certain complicated ways.

I. THE STATES' RESPONSIBILITY

The responsibility of the States with regard to the education of Indians is to provide, in so far as possible, the opportunity for such education, on the same terms under which public education is made available to citizens generally. In *Brown v. Board of Education*, 347 U.S. 483, 493 (1954), the United States Supreme Court held that the opportunity for public education, "where the State has undertaken to provide it, is a right which must be made available to all on equal terms." Moreover, the courts have long held that the availability of Federal Indian schools does not justify turning away Indians from the public schools. *United States v. Dewey County*, 14 F. 2d 781 (D.C. S. Dak., 1926), aff'd sub nom. *Dewey County v. U.S.* 26 Fd. 2d 431 (Eighth Circuit, 1938), cert. den. 278 U.S. 640 (1928); *Piper v. Big Pine School Dist.*, 193 Cal. 664, 226 Pac. 926 (1924). It can be fairly stated, then, that in so far as possible, the States have the basic responsibility to educate Indians as they do all of their citizens. Indeed, each of the States has bound itself by statute to provide this "universal" education to all eligible students.

II. THE FEDERAL RESPONSIBILITY

It is important to note, however, that two factors render State education of Indians on reservations a difficult task. First, reservation land is held in trust for Indians by the United States and therefore is not subject to local taxation, the nearly universal source of funding for American public education. Thus, the public education of Indians is often a cost which the States must look elsewhere than the Indian

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community to meet. (In many cases, the States look to the Federal Government, which contracts with local educational agencies for the education of Indians under the Johnson-O'Malley Act, 48 Stat. 596, as amended by 49 Stat. 1458.)

Second, many Indians live in remote areas of large reservations, very far from public school facilities. The combination of these factors results in public education of some Indians being a herculean task.

Because of the tax exempt status of the trust land and frequent absence of organized public school districts, the Bureau of Indian Affairs has assumed responsibility for providing schools. This Federal responsibility for educating Indians, however, is not tied to any specific, primordial statutory or constitutional mandate. (Not even those treaties which provide for the education of Indians specifically impart this duty to the Federal Government.) This is not to say that the Federal Government has any intention of shirking its responsibilities in Indian education. Indeed, it is submitted that the United States has a strong moral call to meet these responsibilities. Rather, the point to be made is simply that the Government's activities in educating Indians should be considered as being exercised in lieu of the basic State responsibilities. This analysis is borne out in practice in that more than two-thirds of Indian children from reservation areas are currently enrolled in the public schools.

In addition to considerations which flow from Indian trust land status, another major factor has resulted in the Federal Government's assuming some responsibility for Indian education: in some cases the basic education programs offered by the States to all their citizens are not fully responsive to the special needs of Indian students. In such instances, the Federal Government has often contracted with State educational agencies to provide special programs tailored to meet Indians' needs. Such contracting is generally carried out under authority of the Johnson-O'Malley Act, *supra*.

The Federal Government discharges its responsibilities for educating Indian children in the following ways:

(1) 87,080 Indian students are enrolled in public schools which receive financial assistance from the Federal government through Johnson-O'Malley funding.

(2) 58,763 Indian students are enrolled in day and boarding schools conducted by the Bureau of Indian Affairs.

(3) 4,025 Indian students live in Federal dormitories and attend public schools.

(4) 2,222 Indian students attend Indian-controlled schools in Indian communities.

(5) 61,000 Indian students (most of whom are also counted in group 1, *supra*) attending public schools are the beneficiaries of Federal "impact aid" provided to their schools by the Office of Education; additional resources for Indian education will be provided through the Department of Health, Education, and Welfare by the newly-funded Title IV of P.L. 92-318.

(6) Indian children in public schools throughout the country whose parents live at the poverty level are provided special educational opportunities through resources provided by the Office of Education pursuant to the Elementary and Secondary Education Act of 1965.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

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Memorandum

To: Acting Director, Office of Indian Education Programs

From: Commissioner of Indian Affairs

Subject: Proposed Changes in Johnson-O'Malley Regulations

The closing dateffor reactions to the Johnson-O'Malley regulations was March 15, 1974. I am naming the following to serve as a committee to consider the proposed changes in Johnson-O'Malley Regulations:

1. Mr. George Scott, Deputy Director
   BIA Education Programs, Chairman
2. Mr. Charles Richmond, Chief
   Branch of Public School Assistance, BIA
3. Mr. Brice Lay, Chief
   Division of Educational Assistance, BIA
4. Dr. Peter Campanelli
   Division of Internal Services, BIA

In addition, I will ask a member of the staff of the Solicitor's office to serve in this committee, then to can be sure of their approval of the legality of the changes.

The committee will have as its concerns the following:

1. Study all recommendations and comments received following publication of the proposed changes.
2. Consider the proposed CFR changes and the proposed BIA manual changes together to determine whether portions now part of the manual should be made a part of the CFR.
3. Redraft the proposed CFR and manual changes, giving careful consideration to comments from all sources.
4. Make available to all persons or groups who commented on the proposed changes a copy of the new draft, and give them sufficient time to again respond.

The committee is asked to begin its work as soon as possible.

A Thompson

Commissioner of Indian Affairs

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550
Commissioner's SF
Mailroom

EQMarichitp 3/14
Rewrite per Williamson 3/20/74

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

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June 28, 1974

Dr. William J. Benham
Administrator, Indian Education
Resources Center
Bureau of Indian Affairs
Albuquerque, New Mexico 87103

Dear Sir:

We are enclosing for your review and consideration proposed new regulations for the Johnson-O'Malley Program to replace 25 CFR, Part 33. This proposed regulation is a result of comments made by you and others to our draft revisions of the Johnson-O'Malley regulations, dated January 2, 1974. Our purpose in revising the regulations is to assure that the Johnson-O'Malley program meets the needs of Indian people as Indian people themselves determine.

In order to submit a revision in time for publication, we are asking that you let us have your comments, suggestions, or objections to the proposed regulations no later than July 29, 1974. Please address your remarks to Dr. Clennon E. Sockey, Director of Education Programs. Enclosed is a self-addressed envelope for your convenience.

We appreciate your assistance in this matter which is of such great importance to Indian people.

Sincerely yours,

Morris Thompson
Commissioner of Indian Affairs

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Proposed Revision Part 33, Chapter I, Title 25, Code of Federal Regulations to read as follows:

Part 33 - Special Programs for the Education of Indian Children

Section

33.1 Definitions.

33.2 Contract Eligibility.

33.3 Community Participation.

33.4 General Requirements for Contracts.

33.5 State School Laws.

33.6 Public School Use of Federal Property.

AUTHORITY: The provisions of this Part 33 issued under Sec. 3, 48 Stat. 596, as amended; 25 U.S.C. 454, unless otherwise noted.

§ 33.1 Definitions.

Whenever used in this part the terms defined in this section shall have the meaning herein stated:

(a) "State" means a State of the United States of America or any subdivision thereof.

(b) A "school District" is the local unit of school administration as defined by the laws of the state in which it is located.

(c) An "Indian" is an individual either of 1/4 or more degree of Indian blood or a member of a tribe, band, or other organized group of Indians, including Alaska Natives, which is recognized by the Secretary of the Interior as being eligible for Federal Services throughout the United States.

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(d) An "Indian Advisory School Board" is a board elected by Indian parents within a school district to plan, program, review, and evaluate programs for the education of eligible Indian students.

(e) "Commissioner" means the Commissioner, Bureau of Indian Affairs.

(f) "Basic support payments" means payments made in support of school operational costs in order to meet minimum educational standards established by the State.

(g) "Special and Supplemental" programs are to meet the special needs of Indian students which may result from the financial status of the parents, or from cultural and language differences, or other factors, so that Indian students can receive the maximum benefit from the basic educational program.

(h) An "Indian Corporation" is a corporation which is wholly controlled by Indian shareholders and which is chartered under State law, under Tribal authority, or a federally chartered corporation under the Indian Reorganization Act, 25 U.S.C. §477.

(i) An "Educational Plan" is a plan for the programmatic accountability and expenditure by an Educational Agency under a contract for the education of eligible Indian students under this part.

(j) "Educational Agency" means any state, school district, intertribal corporation, Indian corporation directly engaged in providing educational services, or any public or private Indian controlled school or institution.

(k) The Johnson-O'Malley Act means the Act of April 16, 1934, 48 Stat. 596, as amended by the Act of June 4, 1936, 49 Stat. 1458, 25 U.S.C. §452-454.

(l) "Secretary" means the Secretary of the Interior.

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(m) "Area Director," means the officer in charge of a Bureau of Indian Affairs Area Office.

§ 33.2 Contract Eligibility.

(a) Contracts may be entered into under the provisions of the Johnson-O'Malley Act with any educational agency for the education of Indian children in kindergarten through grade 12.

(b) All funds appropriated for expenditure under Part 33 shall be apportioned annually among the states and among the educational agencies within each state on an equitable basis. (1) All such funds shall be apportioned among all states on the basis of the number of eligible students for whom funds are sought, with allowance being made for the actual cost of delivering educational services in each state. For the purpose of determining the actual cost of delivering educational services in each state, the Commissioner shall refer to the average per-pupil expenditure of each state. (2) Absent extraordinary or exceptional circumstances, funds allocated for educational agencies shall be apportioned to the agencies so that each contracting educational agency will receive approximately the same amount for each eligible Indian student. The Commissioner may make exception and authorize a contract with an educational agency having special cultural, social, linguistic, or educational needs which provide the agency with more than the average per pupil sum received by educational agencies.

(c) The contracts may authorize payments for educational programs in two categories in the following priority: (1) In payment for the costs of providing special or supplemental programs to meet the special needs of Indian students, as determined by the Indian Advisory School Board, which may result from the financial status of the parents, or from cultural and

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language differences, or other factors, so that Indian students can receive the maximum benefit from the basic educational programs of a school. (2) In support of a basic state school program offered to all students, to meet educational standards established within the state, only if authorized by the Educational Plan, in writing, and only under extraordinary or exceptional circumstances. The contracts may authorize payments for basic program aspects only upon satisfactory proof of all the following: (a) a reasonable tax effort; (b) exhaustion of all other sources of financial aid, including P.L. 874; and (c) a high percentage enrollment of eligible Indians.

(d) Equal educational opportunities: (1) Contracts shall specify that all state school districts receiving funds under the provisions of this part shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students. School districts receiving funds under this part must insure that Indian children receive all aid from the State, and other proper sources other than this contract, which other schools in the district and other school districts similarly situated in the state are entitled to receive. In no instance shall there be discrimination against Indians or schools enrolling such Indians. (2) When informed by a complaint or through its own discovery that possible violations of Title VI of the Civil Rights Act of 1964 exist within a state school district receiving Johnson-O'Malley aid, the Department of the Interior shall, in accordance with Federal requirements: (i) notify the Department of Health, Education and Welfare of the possible violation of Title VI and pursuant to Memoranda of Understanding between the Secretary of the Interior and

the Secretary of the Department of Health, Education and Welfare conduct an investigation into the matters alleged. (ii) If the report of investigation conducted by the Department of Health, Education, and Welfare in (i) above discloses a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue financial assistance under the Johnson-O'Malley Act or by any other means authorized by law. As delineated in 43 CFR Sections 17.1, 17.8 and 17.9, such other means may include reference to the Department of Justice with a recommendation that appropriate legal proceedings be brought by the United States to secure compliance or by formal hearing before the head of the bureau or office administering the federal financial assistance, or at his discretion, before an administrative law judge designated in accordance with section 11 of the Administrative Procedure Act. The Secretary of Interior, may, by agreement with one or more other Federal departments, provide for the conduct of consolidated or joint hearings as prescribed in 43 CFR Section 17.8(e).

(e) Programs conducted through contracts under this part must be designed for the exclusive benefit of eligible Indian students.

§ 33.3 Community Participation.

(a) Parental involvement at the local level is an important means of increasing the effectiveness of programs provided by funds under this part. Accordingly, it is the policy of the Commissioner, in regard to funds contracted under this part, to require the maximum participation by the community affected. Contracts shall provide that this participation shall

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include, but shall not be limited to, the provisions of this section. In the case of contracts with Indian Corporations all provisions of this part relating to Indian Advisory Boards shall be required.

(b) Each educational agency having a contract under this part shall work with the Indian Advisory Board established for each school community involved pursuant to subsection (c). Each educational agency shall, subject to the limits prescribed in its contract, make available part of its Johnson-O'Malley funds for conducting elections of Indian Advisory Boards, for attendance of members of Indian Advisory Boards at state-wide meetings, workshops, board training and for other reasonable expenses incurred by an Indian Advisory Board in relation to its duties and in the planning, development, evaluation and monitoring of programs funded under this Act.

(c) All Indian Advisory Boards shall be nominated and elected by procedures determined by the Indian community affected. Each Board shall file a copy with the Area Director of its organizational papers and by-laws, together with a list of its officers and members, including their current addresses. Members of the Board shall be elected by the Indian people in the community affected, and where the program or project will serve secondary school students, Indian secondary school students. Election of members shall not limit the continuing participation of the Indian community in the operation and evaluation of the program.

(d) Each Indian Advisory Board shall be authorized to: (1) make an initial assessment of the needs of Indian children in the community affected, (2) participate in negotiations concerning contracts under this part, (3) participate in the planning, development, evaluation, and monitoring of programs, (4) hear complaints by Indian students and their parents,

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(5) meet regularly with the professional staff serving Indian children and with the local educational agency, (6) hold Board meetings at least once a month which are open to the public, (7) approve all programs and expenditures of funds before contracts are concluded with educational agencies, (8) establish rules for conducting its meetings, and (9) have such additional powers as are consistent with these regulations.

§ 33.4 General Requirements for Contracts.

(a) Educational Plan. To become eligible for consideration to obtain a contract, an educational agency must formulate an educational plan and submit it to the appropriate Area Director. Such plan shall become a part of any contract awarded. Programs shall be designed to meet the special needs of Indian students, which may result from the financial status of their parents, from cultural and language differences, or from other factors.

(b) Budget Estimates and Financial Information. Each educational agency must submit to the Area Director such budget information as is necessary in order to determine eligibility to contract for the funds requested. If funds are sought for basic support services, the contractor has the burden of meeting the standards set out in 33.2(c).

This information shall include records of receipt of funds from all sources, and if a state educational agency requests supplemental funds for special need programs, shall specify line items in each school district's program for which funds from this program are to be expended. When supplemental funds are sought, full information on programs funded from other supplemental sources shall be furnished. In every case where a contract is awarded for basic support, formal written findings shall be made by the Area Director and incorporated into the contract.

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(c) Reporting. Information shall be furnished by the education agency as to the type of expenditure for which reimbursement is sought under the terms of the contract. An adequate accounting system shall be maintained that enables identification and audit of expenditures of funds contracted for under this section.

(d) Educational Standards. Contracts shall provide that the minimum educational programs required by established State standards must be maintained.

(e) Staff. In contracts where special or supplemental programs are funded, a provision must be included in the contract that special consideration for the selection of personnel shall be given to those individuals with special expertise in the areas of Indian culture, customs, society, history, and language, etc. In these areas, academic qualifications need not be a factor.

(f) Inspection of Programs. Educational agencies, including schools operated by them, receiving funds shall be open to visits for purposes of program audit and inspection by duly accredited representatives of the Federal government and the Indian Advisory Board. The Educational Agency shall furnish the Area Director with a detailed report describing the accomplishments during the previous school year, due before October 15 each year, which shall contain an evaluation of the effectiveness of the program. The Area Director shall audit program effectiveness and the financial expenditure for each such contract during the first half of each contract year. The records involved in any claim or expenditure which has been questioned shall be further maintained until final determination has been made on the questioned expenditures by the Commissioner.

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(g) Each contract shall include provisions that the Educational Agency will comply in full with the requirements concerning community participation, as set forth in subsection 33.3 of this part.

(h) The contract shall provide that Educational Agencies receiving funds will be open to visits and consultations by duly-accredited representatives of the federal government, by parents in the community, and by tribal representatives.

(i) Copies of all contracts, records, reports, budgets, budget estimates, plans, and other documents pertaining to the administration of the program shall be made available by the Educational Agency to each member of the Indian Advisory Board. Such documents shall be made available, upon request, to members of the public by Educational Agencies and local school officials for inspection. Educational Agencies and local school officials shall provide, free of charge, single copies of such documents upon request.

§§ 33.5 State School Laws.

State employees in those states where P.L. 280, 28 U.S.C. §§ 1360 and 25 U.S.C. §§ 1311, does not confer civil jurisdiction may be permitted to enter upon Indian tribal lands, reservations, or allotments if the duly constituted governing body of the tribe adopts a resolution of consent, for the purpose of: (a) Inspection of educational conditions in the public schools located thereon; (b) to enforce state compulsory school attendance laws against Indian children, parents, or other persons in loco parentis.

§§ 33.6 Use of and Transfer of Federal Property.

The use of federally-owned facilities for public or private school purposes may be authorized when not needed for Federal activities. Transfer of title to such facilities may be arranged under the provisions of the

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Act of June 4, 1953 (67 Stat. 41).

(a) Insurance covering nonexpendable property: When nonexpendable Government property is turned over to public or private school authorities under a use permit, the permittee shall insure such property against damage by fire, windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the superintendent or officer in charge of the Indian agency responsible for the property. In case of damage or destruction of such property by fire, windstorm, vandalism, snow or tornado the insurance money collected shall be expended only for repair or replacement of property; otherwise, insurance proceeds shall be remitted to the Bureau of Indian Affairs.

(b) Maintenance of Buildings: The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

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Memorandum:

TO: JOM Task Force (See Below)

FROM: George D. Scott

SUBJECT: JOM Task Force Meeting

There are several things I feel we should be considering prior to our meeting on July 29. Please give serious thought to the problems facing us so that we can be prepared to exchange ideas and recommendations for guidelines, formats, data collection and retrieval system, reporting formats, and plans for orientation and training sessions for BIA field staff, JOM Parent Committees and JOM contractors. In developing these recommendations please keep in mind the JOM regulations under which we will be operating.

I am asking that Brice Lay's staff compile information and copies of materials used presently by the Area Offices in the administration of the JOM program. This material will include evaluation forms, monitoring forms, follow-up forms, criteria for establishment of eligibility for target populations, cooperative arrangements between the participating States and BIA Area Offices.

If you have any suggestions or recommendations pertaining to our prior preparation for this meeting please contact me as soon as possible. We are looking forward to a very productive working meeting.

Approved: /s/ C. E. Sockey 7/18/74
Director, Indian Education Programs

B. Lay
C. Richmond
B. Pappan
P. Campanelli
E. Holmgren